Appendix A

Procedural Memorandum of the Review

MEMORANDUM

TO: Counsel for Interested Parties

FROM: Duncan R. Beveridge Senior Counsel
and Mark J. Sandler, Senior Policy Advisor

DATE: June 30, 2000

RE: Procedure

Overview

As you know, the Honourable Fred Kaufman, C.M., Q.C. is conducting a review of the government's response to reports of institutional abuse in Nova Scotia. For convenience, the terms of reference for this review are enclosed.

Each of you represent interested parties respecting the subject matter of this review. Mr. Kaufman personally and through his staff have had preliminary discussions with you to elicit your views as to how the review should be conducted and what role should be played by you and your clients during the review. So far, there has been a great deal of consensus as to the approach to be taken by Mr. Kaufman, which is gratifying.

After careful consideration, an approach to the conduct of this review has been developed which is reflected in the paragraphs that follow. Any input would be welcomed.

Scope and Limitations of the Review

The preamble to the terms of reference first describes a *three-pronged response* to reports of abuse by provincial employees against former residents of provincially operated institutions: (1) an investigation of the alleged abuse (primarily referable to the Stratton Review and Report); (2) an assessment of the safety of youth currently in custody (referable to a review conducted by Viki Stewart-Samuels); and (3) the Compensation Program for Victims of Institutional Abuse. The preamble then focuses upon the Compensation Program, noting the criticisms levelled against it by various parties and the Government commitment, in response to these criticisms, to *a review of the Compensation Program*.

However, the Terms of Reference themselves direct Mr. Kaufman to determine if the Government response to institutional abuse has been appropriate, fair and reasonable. He is further directed, in part, to assess the appropriateness of that response in light of other available response options and to assess the implementation of *each element* of the Government response.

It follows that the Terms of Reference, crafted in the broadest terms, appear to contemplate an evaluation of the entire Government response to institutional abuse and not only the Compensation Program.

Mr. Kaufman has endeavoured to interpret the preamble and Terms of Reference in a purposive way. In his view, the prime focus of the review must be directed to the Compensation Program itself. It represents that aspect of the Government response that has been most closely questioned and which, no doubt, now represents the most substantial component of the Government response. However, its appropriateness cannot be evaluated in a vacuum, but must be seen in the context of the complete Government response. To state the obvious, the appropriateness of the Compensation Program must be assessed, in part, by considering what information, including the Stratton and Stewart-Samuels Reports, was available to the Government when the Compensation Program was designed and approved. Its continued appropriateness, including revisions made to the Program mid-stream, can only be evaluated in the context of other ongoing government activities, such as the police investigation and the establishment of the Internal Investigation Unit to investigate the allegations of abuse against current employees for disciplinary purposes. Simply put, other components of the Government response may have influenced how the Compensation Program was designed and revised.

Equally important, it is well recognized that an appropriate Government response to reports of institutional abuse needs to be multi-faceted and contain complementary components. If one component of the Government response is flawed or inadequate, it is likely to affect the overall government strategy. Similarly, if different components of the government response operated at cross-purposes or were duplicative of each other, the overall effectiveness of the government response would have been affected.

In summary, Mr. Kaufman's mandate compels him to document and assess the full Government response, with particular emphasis upon the Compensation Program.

Mr. Kaufman is to perform a *review,* not a *public inquiry.* The distinction is an important one. During a review, witnesses cannot be compelled to testify under oath or, indeed, to assist the review at all. The production of documents may be requested but generally cannot be compelled. Persons providing relevant information or documents may be consulted in private.

This is often preferable, particularly where the legitimate privacy interests and personal dignity of those persons may otherwise be compromised. There is no opportunity for interested parties to test, through cross-examination, the accuracy or veracity of other parties. Given these limitations, it is obvious that neither findings of credibility nor disputed findings of misconduct can be made against anyone.

The law is also clear that Mr. Kaufman is precluded from expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization or making any findings of fact with respect to civil or criminal responsibility of any person or organization. This means, for example, that he is precluded from determining whether any specific allegation of abuse is well-founded or not. Indeed, it would represent the ultimate unfairness for him to do so, given the limitations upon his powers.

As well, Mr. Kaufman is specifically directed not to compromise any police investigation in relation to the alleged institutional abuse. The RCMP is presently conducting a lengthy investigation into the allegations of institutional abuse. Mr. Kaufman and his staff have met with the RCMP to ensure that our activities do not compromise in any way the ongoing police investigation. The same care will be taken not to interfere with any investigation into allegations of public mischief/fraud. This approach is intended to ensure fairness to *all* parties potentially affected by police investigations.

Not only do fairness and legal constraints prevent Mr. Kaufman from evaluating the merits of each allegation of abuse that has been made, it is quite unnecessary to accomplish the important objectives of this review. As he stated when his appointment was announced, "the challenge of this assignment will be to learn lessons from the past...and hopefully bring forward a blueprint for the future."

This review has both factual and systemic components. Mr. Kaufman is first mandated to describe the government response to reports of institutional abuse. This may be regarded as the factual component of the review. This requires an examination of documentation from a variety of sources, including documents from the files of counsel for interested parties, where accessible, and documents contained within government files. These documents need then be organized and assimilated. Input must also be obtained from the many parties who had knowledge of various elements of the government response. An important aspect of this factual component is the impact of the government response upon those affected by it--particularly claimants and employees and those associated with them. (Unless the context indicates otherwise, "employees" refers to both current and former employees.)

Mr. Kaufman is also mandated to *evaluate* the government response and make recommendations for the future. This may be characterized as the systemic component of the review and represents its most important function. This requires the review to accumulate materials from various jurisdictions across Canada and elsewhere that address how reports of institutional abuse have been or should be addressed by government. Some individuals who have had involvement, from various perspectives, in redress programs elsewhere in Canada, will be interviewed or otherwise drawn upon as resource persons.

Documents

As earlier noted, the examination of relevant documents from a variety of sources represents an obvious task of the review. This process has already commenced with the files of government. The government has directed its personnel to fully cooperate with the review in providing access to relevant documents, whether or not such documents could legally be withheld, for example, pursuant to privilege. This accessibility by the review raises issues of disclosure to other parties, addressed later in this memorandum.

Relevance is determined by reference to the scope and nature of the mandate earlier described. This means, for example, that the review has no need to examine every file pertaining to a claim for compensation. It has been suggested that the review should examine, on a random or "spot audit" basis, several of the specific files pertaining to individual claimants and the disposition of their application for compensation. We would be interested in your views as to the appropriateness or necessity of this approach, how the files should be identified and whether any legal impediments prevent such an approach.

Several of you have already indicated that you have relevant documents that you wish to provide to the review. Such documents should be provided to the review at the earliest opportunity. Any logistics issues can be addressed with each counsel. You may be requested to provide additional documentation to the review as their relevance becomes known. Issues of reciprocal disclosure are discussed below.

Interviews of Claimants and Employees

To understand and describe the impact of the government response upon claimants and employees and those associated with them, Mr. Kaufman has decided that he must personally meet both with individuals who were allegedly abused and with institutional employees who are accused of abuse. Their perspectives will enable him to put a "human face" to the systemic concerns being expressed about the way in which both claimants and employees were dealt with.

Of course, their perspectives will also assist in determining what, if any, aspects of the government response were well-suited to the situation.

The objective here is not to probe their individual accounts or defences. Examination of their accounts of abuse or defences to allegations of abuse would be inconsistent with the scope and nature of Mr. Kaufman's mandate, unnecessary and possibly traumatic for many parties. Such an approach would also potentially interfere with ongoing criminal investigations.

Mr. Kaufman will meet with "representative" claimants and employees. There may be many more individuals that would like to meet with Mr. Kaufman or his staff. Though sensitive to these needs, sheer logistics, together with the concern earlier expressed that the review not compromise any criminal investigation, favour an approach that enables Mr. Kaufman to hear from representative individuals, selected in consultation with counsel for interested parties. Counsel for claimants and employees have both recognized the merits of this approach.

These additional considerations should apply to these interviews:

(1) Counsel for claimants, in consultation with review staff, will identify and contact representative claimants to meet with Mr. Kaufman. Similarly, counsel for employees, in consultation with review staff, will identify and contact representative employees to meet with Mr. Kaufman. It may be desirable, in some cases, for Mr. Kaufman to hear from associated individuals, such as family members.

(2) The meetings will be informal and will not be formally recorded.

(3) Mr. Kaufman will respect the personal dignity and legitimate privacy interests of those interviewed. This means, for example, that their names or information that would disclose their identity to the public will not be inserted into the Report. The review cannot undertake that the sessions will remain confidential, given the absence of privilege and the existence of search and subpoena powers.

(4) Counsel will, of course, be permitted to attend such sessions, if their clients so desire.

(5) These sessions will be structured to reduce stress or trauma to all participants. Any or all of the following might be employed to accomplish this end: (a) the presence of support persons; (b) professional assistance before, during or after the sessions; (c) limits upon the number of persons present for these sessions; (d) an individualized format. While it would be logistically preferable to meet with groups of claimants or employees collectively, this will not

always be possible, particularly given the sensitivity of matters to be addressed by the participants. Each session will be individually structured in consultation with counsel for the affected parties.

Interviews of Others

Interviews of individuals other than claimants and employees (or those associated with them) will also be informal and will not be formally recorded. Other than individual claimants and employees who are interviewed, the names of others interviewed will be available to other parties who are entitled to suggest other names for the review to consider interviewing.

Formal Disclosure of Documents and Interviews

Formal disclosure requirements for all documents/information accessed or obtained by the review to interested parties or formal disclosure requirements as between interested parties are incompatible with the nature of a review, its systemic focus and, in some instances, the personal dignity and legitimate privacy interests of some individuals. As well, parties who are prepared to allow Mr. Kaufman to access otherwise privileged or confidential documents are likely to be unable or unwilling to do so if rules of formal disclosure are to be applied.

Put simply, formal rules of disclosure are better suited to a public inquiry, where findings of misconduct may be made and where parties have the right to examine and cross-examine witnesses.

Having said that, the point has been made by counsel for both claimants and employees that much of the information/documentation pertaining to the structuring and implementation of the government response to reports of institutional abuse is found in government files to which they have little or no access, or which is known only to government employees. Accordingly, it is said, absent disclosure of these documents or the content of interviews with government employees, they are not well situated to challenge the government's account of events or, even to know, in some respects, what that account is.

These concerns are justified and acquire heightened significance when it is remembered that claimants and employees have asserted, for divergent reasons, that the government's response was insensitive to their needs and concerns and excluded them from critical decisions during the process. Mr. Kaufman's review must be sensitive to these concerns in crafting its own processes.

The review therefore intends to take an approach that reconciles the scope and nature of a review, the legitimate privacy interests and personal dignity of all parties, and the importance of ensuring a full and effective participation by everyone in the work of the review. This means that the review staff will, as circumstances require, alert parties to factual issues raised by other parties so as to invite comment. Mr. Kaufman will remain mindful of the systemic focus of the review. That means, in this context, that some factual disputes will remain unresolved, if to resolve them without reciprocal disclosure would be unfair and potentially misleading, particularly if their resolution is unnecessary to meet the systemic objectives of the review. As well, as noted immediately below, the review will circulate a list of systemic issues for consideration by Mr. Kaufman. These will be drawn, in part, from the issues raised by the interested parties.

Submissions

Several counsel have queried whether written submissions will be requested and whether there will be a formal exchange of written submissions between interested parties. Again, mindful of the nature of a review, we intend to proceed in the following way:

(1) Once Mr. Kaufman and his staff have developed an understanding of many of the underlying facts and issues, a list of issues will be prepared and circulated to counsel for interested parties. In particular, this list will identify systemic issues that appear to arise from the Nova Scotia experience. Counsel will be invited to suggest modifications or additions to this list. A final list will then be circulated and will facilitate any submissions that counsel may wish to make to Mr. Kaufman. A discussion paper that elaborates upon some or all of these issues may also be circulated to further promote discussion and submissions. These materials will be designed to ensure that all interested parties are aware of key issues to be addressed.

(2) All interested parties or their counsel will then be invited to make submissions to Mr. Kaufman on those systemic issues. Of course, parties may draw upon the relevant facts, as they see them, to illustrate the systemic problems identified here and how they might be resolved in the future.

(3) All interested parties or their counsel are entitled to make both oral and written submissions to Mr. Kaufman. It is not necessary to do either. The decision whether to make submissions at all or whether to make oral and/or written submissions is that of the interested parties and not of the review. Some interested parties may feel that their position has been fully developed during the interviewing process and need not be elaborated upon further.

(4) A date will be set for receipt of all written submissions. There will be no formal exchange of written submissions between interested parties. We fully expect that the issues will have been fully identified through the interviewing process and through the list of systemic issues earlier circulated. (There may be discrete legal issues that invite some exchange of written submissions on those issues alone. This can be worked out with counsel as circumstances arise.)

(5) Once written submissions are received, sufficient time will be set aside for oral submissions from interested parties or their counsel. Each interested party will be allocated a separate time and date for submissions, if any. Of course, parties may be invited to respond to issues raised by others.

The process described is one of informality. Systemic issues are best dealt with through a process that ensures that everyone is aware of the issues to be considered and has been informed of the substance of other parties' positions, where one would be expected to respond to those positions, and thus has a full opportunity to be heard. From today's date up to a date to be fixed to close off any submissions, interested parties are free to provide anything to Mr. Kaufman, including written submissions if they are of the view that these will assist him in examining the issues. The only limitations upon written submissions are self-imposed through the exercise of good judgement and some economy in writing.

Funding

Mr. Kaufman recognizes that the full and meaningful participation of claimants and employees in the review cannot take place in a way that is sensitive to their needs and concerns, absent the involvement of counsel. It is unlikely that representative claimants or employees would otherwise be easily accessible to the review or predisposed to fully participate. Ongoing or potential police investigations into allegations of physical and sexual abuse or public mischief are undoubtedly of concern to some or many of these parties. These concerns provide an additional motivation for the intervention of counsel. Further, counsel who have represented these parties in the past often have had a longstanding involvement in the issues to be addressed by the review and, as such, will be sources of information in their own right, apart from any role in facilitating the participation of their clients or in making submissions to the review.

Counsel for claimants or employees should not be expected to participate in the work of the review without any remuneration. Mr. Kaufman recently recommended to the government that, where counsel do not otherwise have reasonable access to funding and where their involvement is necessary to the work of the review, government should bear the responsibility of ensuring that counsel receive some remuneration for their involvement. There should be limits placed upon the levels of remuneration, consistent with fiscal and time constraints and with the limitations upon any adverse findings that can be made against any one of their clients. This will mean that counsel are reasonably, even if not necessarily fully, compensated for their assistance to the review. Reasonable disbursements should also be paid.

Preconditions to government funding of counsel should, therefore, include:

(1) counsel do not otherwise have reasonable access to funding;

(2) the involvement of particular counsel is necessary to the work of the review;

(3) counsel to be funded and who share a commonality of interest with other counsel are prepared to agree to avoid duplication of efforts and work co-operatively; and

(4) counsel to be funded agree to predetermined rates of remuneration, with a ceiling upon the maximum fees to be billed.

Ceilings upon total fees to be billed should be set based upon the commonality of interests of counsel. So, for example, a ceiling should be set for fees to be billed by counsel for claimants collectively. Those counsel can allocate work among themselves.

Counsel for Claimants

Many counsel represented claimants seeking compensation from government for reported institutional abuse. Two, Anne Derrick and John McKiggan, have requested standing and funding. They represented collectively about half of the claimants who sought compensation from the government for reported institutional abuse. At present, Mr. Kaufman is satisfied that Ms. Derrick and Mr. McKiggan can bring forward representative claimants to meet with the Review, marshal the facts and documents relevant to their position, and make submissions on behalf of claimants generally. They have indicated their willingness to do so.

Though no other counsel have approached the review on behalf of claimants, it is untenable to suggest that the many other counsel who also represented claimants (sometimes a single claimant) could or should also be funded. Again, it is important to recognize that, while the circumstances of each claimant are unique, the review is not mandated to evaluate the merits of each claimant's position. Accordingly, no unfairness is created by the approach advocated. Of course, there may be counsel other than Ms. Derrick and Mr. McKiggan who may wish to participate in the work of the review. However, should they request funding, Mr. Kaufman would be guided by the above principles. Most particularly, they would have to establish that their contribution is necessary to the work of the review -- that is, that their contribution would provide the review with a perspective not already available.

Mr. Kaufman recommended that counsel for the claimants, Ms. Derrick and Mr. McKiggan be collectively funded by government in an amount not to exceed $70,000 plus HST and reasonable disbursements. Of course, accounts would be submitted to the review for approval.

Counsel for Employees

Cameron McKinnon and Dale Dunlop represent collectively approximately 120 current or former employees. (Mr. Dunlop exclusively represents former employees.) In particular, Mr. McKinnon's prior involvement in the issues under consideration has been considerable. At present, Mr. Kaufman is satisfied that Mr. McKinnon and Mr. Dunlop can bring forward representative employees to meet with the review, marshal the facts and documents relevant to their position and make submissions on behalf of employees generally. They have indicated their willingness to do so. Equally important, they appear to have the confidence of employees generally and represent the counsel of choice for those employees. Indeed, the NSGEU concedes as much.

Employees and ex-employees should fully participate in the work of the Review. Indeed, their participation is essential. Mr. McKinnon and Mr. Dunlop should represent those employees. Mr. Kaufman recommended that counsel for the employees, Mr. McKinnon and Mr. Dunlop be collectively funded by government in an amount not to exceed $70,000 plus HST and reasonable disbursements. Again, accounts would be submitted to the review for approval.

By letter dated June 29, 2000, the Attorney General has accepted these recommendations. An additional sum of $140,000 will be made available to the review on the terms recommended by Mr. Kaufman. The Attorney General also recognizes that an additional allowance may have to be made for disbursements though it is assumed that disbursements will not be in a significant amount.

Hopefully, we can immediately finalize funding arrangements with affected counsel within the next week.

Timetable

The following represents a very tentative timetable for the review's work. It will, no doubt, be modified, as circumstances dictate.

(1) Finalizing funding arrangements-- imminent.

(2) List of systemic issues to be circulated--By July 15, 2000;
Finalized list to be circulated by August 1, 2000.

(3) Receipt of documents from interested parties -- By July 31, 2000.

(4) Sessions with representative claimants and employees -- In July and August, 2000, if possible.

(5) Interviews with others -- Majority to be completed by October 31, 2000.

(6) Written submissions -- By January 2, 2001.

(7) Oral submissions -- The second week of January, 2001.

Your comments are invited.

Appendix B

List of Systemic Issues

MEMORANDUM

TO: **Counsel for Interested Parties**

FROM: **Duncan Beveridge, Senior Counsel and Mark J. Sandler, Senior Policy Advisor**

DATE: **October 16, 2000**

RE: **Systemic Issues**

In August 2000, we circulated a memorandum to counsel for interested parties outlining a draft list of systemic issues that might be addressed by Mr. Kaufman during his review. We invited counsel to provide comments on this draft list. As a result of the suggestions of counsel, our memorandum has been modified to clarify or add to the draft list. For convenience, the modifications are underlined.

LIST OF SYSTEMIC ISSUES

Introduction

As reflected in the terms of reference, this review is to describe and evaluate the government response to reports of institutional abuse in Nova Scotia. As stated by Mr. Kaufman at the outset, an important goal of the review is also to make recommendations designed to address *systemic issues*, that is, issues that extend beyond the appropriateness of *this* government response and that address how reports of institutional abuse should be responded to in the future. Of course, only those systemic issues that can be said to arise out of the facts to be examined by Mr. Kaufman (or are reasonably incidental to those facts) should be considered by this review.

What follows is a list of systemic issues that might be addressed by Mr. Kaufman during his review.

It is already clear that systemic issues of concern to employees may well be different than systemic issues raised by claimants. The Law Commission of Canada recently reported to the federal Minister of Justice on government responses to reported institutional abuse. The Report provides criteria for evaluating government responses, particularly from the perspective of institutional survivors, that is, those who were truly the victims of institutional abuse. Some of these criteria have been utilized here to help frame systemic issues for consideration. The Report notes, but places considerably less emphasis upon, systemic concerns raised by those against whom allegations of abuse have been made. (Some parties suggest that the Report fails to address, in any meaningful way, the effect of false accusations of abuse against individuals and, for that reason, should not be heavily relied upon in evaluating the Nova Scotia response to reports of institutional abuse.) The list that follows is intended to give prominence to the fullest range of systemic issues of concern to employees, claimants, government and the public. Although the Law Commission of Canada's Report is cited herein, Mr. Kaufman remains mindful of the divergent views already expressed as to the Law Commission's Report.

The list that follows will assist in focusing the work of the review and the submissions of interested parties. Although the list is no longer to be regarded as a draft, the review will continue to respond to the suggestions of all parties and may further modify the list, if necessary. Put simply, this list should not be read as if it were a statute.

The systemic issues are set out in italics. A number of issues overlap. Commentary that follows these issues describes *some* of the criticisms or questions that have already been raised regarding the government's response to reports of institutional abuse in Nova Scotia. In other words, the commentary ties these systemic issues to some of the factual issues that have arisen or are likely to arise in the context of the Nova Scotia response. Of course, at the appropriate time, interested parties and individuals will no doubt expand upon or respond to these criticisms or questions, and raise others. It should be remembered that the commentary often reflects questions, criticisms or concerns raised by interested parties and should not be taken as expressions of opinion by Mr. Kaufman.

In the documentation reviewed by Mr. Kaufman and his staff, individuals who allege they were abused by institutional employees have been variously described as "victims", "survivors", "claimants" or "complainants". Those who have truly been abused are properly described as "victims" or "survivors". Indeed, the latter term may be preferable since it avoids defining individuals solely by their victimization, rather than by their affirmative steps to overcome their ordeals. However, where, as is the case here, issues remain as to who was truly subjected to abuse and by whom, and where allegations of abuse and of fraud are the subject of current investigations, it is often more appropriate to describe these individuals as "claimants", unless the context otherwise requires.

General

1. *What responses should be considered or adopted by government when it receives reports of institutional abuse? What circumstances indicate the existence of systemic abuse within a government institution? When, if at all, should government consider or adopt a non-traditional response to reports of institutional abuse (that is, a response other than as a defendant in traditional litigation)? What circumstances should exist, if any, before such a response is considered or adopted? How extensive should allegations of abuse or proven abuse be before a non-traditional response is considered or adopted? How should government lawyers respond at the earliest stages of reported institutional abuse? In other words, when, if at all, should government lawyers modify or relinquish a traditional adversarial role?*

Commentary: Some suggest that there was an inadequate basis to cause the Nova Scotia government to undertake its compensation program. It is said that the decision to embark upon a compensation program was made before the results of the investigation (headed by former Chief Justice Stratton of New Brunswick) were known and that preconceptions unfairly coloured the government's entire approach to the issue. It is said that the government committed to a compensation program if the Stratton investigation found "abuse". Such a commitment to an open-ended program should only have been made, if at all, if systemic or widespread abuse was found.

It is further suggested that the Stratton investigation itself failed to establish an adequate basis for justifying a compensation program, or at least, a program of the breadth adopted here. Some contend that, at most, any compensation program should have been factually tied or limited to the allegations of abuse brought before Justice Stratton. It has also been suggested that the Stratton investigation's approach was itself flawed and its conclusions skewed. Others suggest that the government was fully justified in adopting a compensation program and, indeed, unduly delayed in doing so, to the detriment of true victims of institutional abuse. Accordingly, it is said, the early adversarial approach of government lawyers to pending litigation was inappropriate, insensitive, unnecessary and harmful to those who had been abused.

The option to create a compensation program was based upon certain assumptions about the number of potential claimants and the cost of the program. These assumptions proved to be very inaccurate. Why?

What role, if any, did investigations of, or government responses to, reports of institutional abuse in other provinces have upon the design and implementation of the Nova Scotia response.

2. *Who, within government, should design the response to reports of institutional abuse? What resources and expertise should be drawn upon in the design of such a response? To what extent should non-government parties be involved in the design of such a response? Specifically, where a non-traditional response is under consideration, which includes a compensation program, what role, if any, should potential claimants and employees have in the design of such a response? How should their role be facilitated? What role, if any, should counsel for such parties have in the design of such a response? How should any role of non-government parties be financed? Once a government program has been designed and implemented, how and when should changes to that program be considered or introduced? What role, if any, should interested parties play in the introduction of potential changes to an existing program?*

Commentary: Was the Nova Scotia government's response designed by those best situated to do so and was it based upon adequate information about potential government responses generally, and about the reported abuse at provincial institutions specifically? Were the appropriate parties included in the design of the three-pronged response? Did those parties, if included, perform the appropriate role?

The Law Commission of Canada's Report identifies the needs of those who have truly been abused. These needs are said to be substantive (for example, the need for counselling, apology and acknowledgment, monetary compensation, a historical record) and process-related (for example, the need for "respect and engagement" in the processes involved in designing and implementing a redress program). Were claimants involved in the design and implementation of the Nova Scotia program in a way that met these needs? The Law Commission of Canada's Report also identifies the need for fairness to those against whom allegations are made. Did fairness to employees compel their inclusion in the design and implementation of the government's response to reports of institutional abuse? What role did or should the NSGEU have played, if any, in this regard? What role did or should the Family Services Association have played, if any, in the design and implementation of the compensation program and in the participation by interested parties in the process?

Claimants were represented by a number of different law firms. In other jurisdictions, for example Ontario, a different model for claimant representation has sometimes been adopted. Could and should a different model have been adopted here? At one point, the government was sued over its unilateral changes to the program. Was there a lack of clarity as to the type of legal relationship that was created by the Memorandum of Understanding between claimants and government? Was the M.O.U. legally enforceable or, if not, should it have been?

Significant changes were made to the compensation program on at least two separate occasions. Some characterize the present Guidelines as unilaterally imposed upon interested parties, particularly claimants. Of course, the appropriateness of the original M.O.U. and the changes later made to the program need be considered. However, here, the issue is process-related. How should changes to the compensation program have been considered and introduced? What role did or should non-government parties have played, if any, in this regard?

What effect, if any, did the media coverage of reported institutional abuse have upon the design and implementation of the government response?

Investigations

3. *Under what circumstances should a public inquiry be established?*

Commentary: The government indicated that its three-pronged response was a more desirable approach than a public inquiry. Should a public inquiry have been called in this matter, either before or after the Stratton investigation was conducted? Some suggest that, even now, only a public inquiry can rectify the problems created by the government's response to reports of institutional abuse. Is this correct?

4. *Where fact-finding or an investigation (such as the Stratton investigation) forms a component of the government response, how should such an investigation be conducted? What documentation should be obtained? Who should conduct such an investigation? Who should be interviewed in furtherance of such an investigation? What protocols should govern such interviews, whether of employees or of those alleging abuse? What should be done with the evidentiary record created during the investigation? What relationship, if any, should exist between such an investigation and any ongoing or potential police investigation? How should privacy issues be addressed? How should potential fair trial interests be protected? Where a compensation program may follow such an investigation, what must such an investigation find in order to trigger a compensation program or other government response?*

Commentary: Did the Stratton investigation and report meet its stated or desired objectives? Was it a "comprehensive" investigation? Did it provide an adequate basis for the compensation program that followed? Was it given adequate resources and time to meet its objectives? Was the investigation handled by appropriate investigators in a way that best addressed those objectives? Was the investigation given appropriate access to materials? Were these materials accessed and, if not, why not? Were persons interviewed in a way consistent with the objectives of the investigation and the legitimate needs of various parties? Should all such individuals have been seen in person by Justice Stratton or his investigators, if they were not, and should they have been sworn? What was done and what should have been done with the materials generated by the Stratton investigation? To what extent should such materials, particularly statements, have been taken with assurances of confidentiality and to what extent were such statements (and should they have been) accessible to other investigative agencies? Did the Stratton investigation enhance or detract from the quality of any subsequent criminal investigation? Justice Stratton reflected that the NSGEU advised employees not to speak with him, absent any ability to confer immunity. Justice Stratton reflected that many employees spoke with him anyway. How should these issues be addressed? Should there have been a correlation between the number and identity of individuals alleging abuse to Justice Stratton and the scope of the compensation program that followed?

Audits

5. *Where an audit of existing practices forms a component of the government response, how should such an audit be conducted? When will such an audit fulfill its desired objectives?*

Commentary: Did the Samuels-Stewart audit meet its stated or desired objectives? Has the government appropriately addressed prevention of future abuse?

List of Systemic Issues

Redress/Compensation Programs

6. *(The following questions are virtually identical to those in question 2. However, here, the questions are specifically directed to the design of a redress program, which may form one part only of a government response.) Where a redress program forms a component of the government response, who should be involved in the design of such a redress program? Specifically, what role, if any, should potential claimants and employees have in the design of such a program? How should their role be facilitated? What role, if any, should counsel for such parties have in the design of such a response? How should any role of non-government parties be financed? Once a redress program has been designed and implemented, how and when should changes to such a program be considered or introduced? What role, if any, should interested parties play in the introduction of potential changes to an existing redress program?*

Commentary: As earlier noted, the Law Commission of Canada's Report addresses the input of those who allege they were institutionally abused in designing and implementing a redress program. For example, the LCC's Report generates questions such as: Were potential beneficiaries of the compensation program permitted to negotiate the terms of their program? Were the costs of obtaining professional assistance for these negotiations properly addressed? Did the government response respect them and engage them to the fullest extent possible in any redress process? Were they given access to information and support to enable them to make informed choices about how to deal with their experiences of abuse? Did the redress process adequately take into account their needs and those of their families and their communities in a manner that is fair, fiscally responsible and acceptable to the public? Did the process permit them to exercise real choices about what redress options to pursue and about strategic decisions relating to those options? Were they adequately supported during the redress process? It has been suggested that these persons were not full partners in the design of the Nova Scotia government's response and that unilateral decisions were imposed upon them by the government. In particular, it has been suggested that the suspension of the program and two subsequent changes to it were done "unilaterally" and, as such, did not "respect and engage" such persons.

On the other hand, it is suggested by employees that the entire process was unfair to them: it stigmatized and prejudiced them, without any meaningful opportunity to shape that process. Underlying their position is the submission that their guilt was presupposed by government, that claimants were presumed to be truthful, to their detriment, and that the entire process was therefore skewed.

7. *Who should be the beneficiaries of a redress program? For what harms should such a program provide redress?*

Commentary: Should benefits have been extended to those who suffered physical abuse only? Should benefits have been extended for the psychological consequences of abuse? Or to those who had been psychologically abused only? The original M.O.U. provided for compensation for abuse perpetrated, condoned or directed by employees of the province. Was this language clear enough? (See changes in Guidelines.) Apart from its clarity or lack thereof, should compensation have extended to abuse by non-employees or residents, condoned by employees?

Were the definitions of "physical abuse", "sexual abuse" or "sexual interference" contained in the original M.O.U. or as later changed appropriate? Were "aggravating factors" appropriately defined and addressed? Should "racist acts" have been regarded as aggravating features or as independent heads of compensable abuse?

8. *What compensation and benefits should be offered? How should maximum levels of monetary compensation be determined? Should a grid be utilized and, if so, how? Should lump-sum or periodic payments be made? How should this be determined? To what extent should financial counselling be offered? What short-term and long-term counselling benefits should be offered? What limits should be placed on such benefits? How should appropriate counsellors be determined? Should the level of verification to secure counselling be different than that to secure monetary compensation? What kinds of apologies and acknowledgments should be offered and by whom? How should this be determined? How should the timing and content of any apologies or acknowledgments interrelate with potential criminal proceedings? Should there be a record or a memorial of validated survivors' experiences and if so, in what form? What education or vocation-related counselling or upgrading should be offered?*

Commentary: All of these issues have relevance to Nova Scotia's response to reports of institutional abuse. Were the compensation categories and counselling allotments appropriate? Should the $120,000 ceiling have been adopted here? Did adherence to compensation categories show appropriate sensitivity to true survivors of abuse? Did compensation categories unduly undermine the reliability of claims? Was a historical record of validated survivors' experiences established here (see paragraph 36 of the original M.O.U.) and, if not, why not? Provisions regulating manner of payment to validated claimants were changed from the original M.O.U. Were the original or later provisions appropriate? Should the counselling benefits have been altered or extended to address any problems that may have arisen as a result of changes to the compensation program? Should apologies have been offered to individual validated claimants.

pending resolution of related criminal proceedings? Were rates and types of compensable legal services provided by claimants' lawyers appropriately set? Were contingency fees appropriately addressed? These and other questions arise here.

9. *The Law Commission of Canada states that "a redress program must be based on a clear and credible validation process." How should claims be assessed on behalf of government? How should claims be evaluated by file reviewers? Who should serve as assessors and file reviewers? What, if any, expertise, should be held by assessors and file reviewers? To what extent should their experience or expertise relate to institutional abuse? What investigation should accompany the validation process? What standard of proof should apply? Should the standard of proof vary depending upon either the nature of benefits or the conduct alleged? What documentation should be accessible to validate or invalidate claims? What documentation should be made available to claimants and when? How should disclosure issues be addressed? How should the personal dignity and legitimate equality and privacy interests of individuals be protected, particularly regarding the future use of such documentation? On the other hand, to what extent should claimants' statements remain confidential from investigative agencies? What role, if any, should counsel for claimants or claimants' organizations have in the validation of claims? To what extent and how, if at all, should employees who are alleged to have been abusive be heard during the validation process? Does the validation process have the potential for impacting upon or prejudicing the ability of employees to obtain a fair trial, if charged? If so, how should the right to a fair trial be protected? What role, if any, should the criminal investigation and the criminal process play in the validation of claims? What steps, if any, should be taken to ensure that a police investigation into alleged wrongdoing is not compromised by a compensation program. This issue includes not only any potential for impacting upon or prejudicing the ability of employees to obtain a fair trial, referred to above, but also any potential for impacting upon a credibility assessment of complainants. How should a compensation program appropriately address the opportunity for rehearing where new evidence has come to light? How should a validation process be designed so as to be based on objective, consistent and relevant criteria?*

Commentary: There is no doubt that the way in which claims were validated both initially and throughout the compensation program represents one of the most significant issues raised during this review. Employees assert that there was a completely inadequate approach to the validation of individual claims during the program and that they were largely or totally excluded from the validation process during much of the program's duration. Some suggest that the laxity of the validation process explains the large number of claims that have been made, alleging that the vast majority of these claims are false. On the other hand, counsel for claimants assert that changes to the validation process in mid-stream were done unilaterally and without reasonable notice or consultation, were inappropriate, unduly delayed individual claims to the emotional detriment of claimants and dissuaded legitimate claimants from seeking compensation. They contend that disclosure was, at times, problematic, and that the legitimate privacy and equality interests of claimants were, at times, not respected. Various parties take serious issue with the procedures employed by IIU in investigating claims. Some contend that the IIU brought preconceptions or stereotypical assumptions to the investigative process.

Some of the issues raised here are discussed in the Law Commission of Canada's Report. Examples of passages that might assist in framing the issues here are reproduced:

> The process must be sufficiently rigorous that it has credibility with program funders, survivors and the public by minimizing the potential for exploitation of the program through fraudulent claims. But it must not put applicants through a procedure that simply duplicates the adversarial and formal legal process of a criminal or civil trial.

Did this compensation program minimize the potential for exploitation of the program through fraudulent claims without gratuitously exposing true victims of abuse to potential re-victimization?

> [It] is essential that the validation process be sufficiently credible that workers at institutions do not have their reputations unfairly impugned. This may even require that they be provided with an opportunity to clear their names should a claimant identify them, even confidentially, as an abuser or a passive but knowing bystander.

Did the validation process appropriately enable persons to clear their names? Should the validation process have done so and, if so, how?

> The more serious and detailed the allegations, the more substantiation may be required. Conversely, where a claim does not rely on a specific allegation, only minimal documentation should be required (e.g. loss of culture and language at residential school for aboriginal children). In these types of cases, validation need require nothing more than simply establishing that a claimant attended a particular institution, and for what period of time.
>
> The degree of validation required may also depend on the nature of the benefit being sought. Given that therapy for those in need of healing is a general social good, regardless of the reason that the therapy is needed, a validation process for persons only seeking therapy should not be excessive. British Columbia's Residential Historical Abuse Program...provides intensive counselling and therapy to individuals who claim they were sexually abused in a

> provincially-operated institution or a provincially-supervised form of care, based on a simple application and verification of the person's residency at the time of the disclosed abuse.

Was the degree of validation required suitably tied to the nature of the benefit being sought? Should there be such a nexus?

> Ordinarily, those funding a redress program should have no particular reason to seek a review of any compensation granted, since the validation process is one they themselves created or agreed to in negotiations. Moreover, since the objective of the program is to provide redress..., it is more consistent with that objective to err occasionally on the side of over-rather than under-compensating. However, an appeal procedure should not be designed to let claimants simply choose the forum or the adjudicator they wish.

Did the original M.O.U. assign file reviewers to individual cases in a manner that was fair and impartial? More specifically, was paragraph 14 of the M.O.U., which permitted claimants, subject to potential conflict of interest, to designate the file reviewer, appropriate? If not, should the practice have been changed and, if so, how should it have been changed? Should file reviewers have an expertise in abuse or in recognizing stereotypical assumptions about abuse and its perpetrators?

> Naturally, it is not possible to precisely predict all contingencies that may arise once survivors come forward with claims. Allowances must be made and flexibility must be built into the program. Nonetheless, where a process is poorly designed or administered, or where completely unforeseeable events unfold, funders may be forced to revise the validation or appeal process in midstream. This is unfortunate because it undermines the goodwill that the program may have fostered in survivors. More dangerously, it can harm survivors by casting doubt on the legitimacy of the claims of all those who have already received an award under the flawed program. Once again, the case for carefully designing a validation process is tied to protecting the interests of both those funding the program and its intended beneficiaries.

Were there valid reasons for revising the compensation program mid-stream? If so, were the revisions done in a way that enhanced respect for the program and that served the needs of affected parties?

Other specific issues tied to the validation process include the following:

Did the original M.O.U. provide for an appropriate period to respond to a demand? (See paragraph 10 of the M.O.U.) Were the changes to the original M.O.U. justified? Were additional deadlines imposed by the Guidelines respecting interviews, signing of medical releases, providing of statements, filing of demands etc. appropriate?

Should the original M.O.U. have specifically addressed the burden of proof? What should the appropriate burden of proof be? What approach was and should have been taken by assessors or file reviewers to the burden of proof?

What reliance was and should have been placed upon the original statements provided by claimants to the Stratton investigation? And upon the assessments of the Stratton investigators themselves? What protocols did and should have accompanied the taking of other statements? How appropriate are the statement-taking procedures later set out in the Guidelines? The Guidelines specifically provide that copies of photo I.D.s or yearbooks will not be provided to the claimant or his or her counsel prior to or following the interview. What concerns motivated that provision? How justifiable were these concerns?

To what extent have claimants' statements been accessible by the various investigative agencies: the police, VIU, IIU etc? (Compare the original M.O.U. and the Guidelines.) To what extent should such statements have been accessible throughout? And to whom?

To what extent have investigative agencies accessed educational, institutional, medical, psychiatric, social work or probation files respecting claimants? To what extent should such files have been accessible? What safeguards have been or should have been introduced to protect the personal dignity and legitimate equality and privacy interests of persons from the later use of records examined in the verification process?

What materials have been provided to file reviewers throughout the compensation program and what materials should have been so provided? How have fresh evidence issues been addressed? Have undue restrictions been placed upon materials to be provided to file reviewers? (See original M.O.U. paragraph 11 and changes thereafter.)

Should there have been any right of appeal from a reviewer's decision or ability to obtain a rehearing based upon fresh evidence? Did the government honour the decisions of the reviewers in all cases? If not, why not? Should file review decisions have been treated as having value as precedents in other cases? If so, to what extent?

Should the file reviewers have been drawn from existing administrative tribunals? (Such as the Criminal Injuries Compensation Board secondments in Ontario.)

Was the verification process originally designed based upon an assumption that few, if any, documents existed relating to the claims? If so, was the assumption accurate and if not, why not?

Was the later use of the polygraph (and the Guidelines relating thereto) appropriate?

Were the Guidelines appropriate in limiting file reviews to written submissions?

Were support persons/therapists always permitted to attend claimant interviews with IIU? Should they have been?

How did changes to the program impact upon legitimate claimants?

Were claimants allowed to "waive" a criminal investigation into their complaints? If so, was this appropriate?

Should executed consents to release certain documentation such as medical records have been made mandatory?

It has been suggested that some claims were not investigated at all, prior to settlement. It has also been suggested that compensation was sometimes paid on individual claims, even where claims were known to be fraudulent or where significant evidence demonstrating fraud was available. Was this approach taken to claims?

Were the terms and timing of the release (respecting future liability/legal proceedings) to be executed by claimants fair and appropriate?

Was the M.O.U. sufficiently precise or detailed on potentially contentious issues?

10. *How should a compensation program provide for outreach to former residents of the subject institutions to ensure that all potential claimants are made aware, in a timely way, of the program and provided with the necessary information to make an informed decision about whether to participate? How should this be done in a way that minimizes false claims?*

Commentary: Some suggest that former residents may have been approached in a way that detracted from their ultimate reliability. This is one of the issues to be addressed here. Another issue that has been raised is the extent to which the compensation program's design properly addressed differences amongst potential claimants. For example, were aboriginal issues appropriately dealt with? Issues relating to gender? Issues relating to disabled claimants? Were appropriate distinctions drawn between claimants in and out of custody? etc.

11. *How long should a compensation program last?*

Commentary: Did the compensation program set appropriate time periods within which claims could be made? Did it appropriately deal with "out-of-time" claims?

12. *Who should administer the compensation program? How should the program be accountable and to whom? How should trust be established between those administering the program and those utilizing it, in a way that nonetheless is compatible with other interests?*

Commentary: Some suggest that government officials are not well-situated to administer a compensation program, given their potential conflict of interest and claimants' preexisting mistrust of government officials. It has also been suggested that program administrators need to be knowledgeable about abuse-related issues. If government officials are to administer such a program, which officials should be so designated? How should the program remain accountable? What role, if any, should the Auditor General play in this regard?

13. *How, if at all, should a compensation program address the accountability of those allegedly responsible for abuse, either directly or indirectly?*

Commentary: The Law Commission of Canada suggests that:

> Accountability may or may not involve legal liability. Care must be taken to ensure that clear criteria are used to establish accountability, where accountability without liability is chosen. People falsely or unjustly linked to child abuse will suffer serious social stigma of accusations. Was accountability addressed and was it addressed in a way that properly weighed and considered the concern that people not be falsely or unjustly linked to child abuse?

Was accountability appropriately addressed here? Did the government's response impact upon the criminal investigation and issues of legal liability? Did the government's response adequately address the state of knowledge of government officials as to wrongdoing?

14. *How should the status of current employees be addressed? Who should investigate the employment status of employees against whom allegations of abuse have been made? How should that investigation interrelate with a) any criminal investigation? b) any investigation to verify claims for compensation?; and c) with any subsequent investigation to evaluate whether fraud has been committed? What protocols should accompany the investigative process?*

Commentary: What was the IIU set up to do? Were its duties and goals clear? How did its role change and why? How did it interrelate with the ongoing criminal investigation, and other components of the government response? What protocols were adopted to address these issues? How did the IIU and VIU interrelate? How did the IIU and Department of Justice interrelate? All of these questions underline a core issue: How should the investigation associated with verifying claims interrelate with the investigation to determine what, if any, disciplinary actions should be taken against employees and with the investigation to determine if criminal charges should be laid? Were these relationships considered and appropriately addressed at the outset or throughout the government's response? Portions of an I.I.U. Report addressing issues of relevance to this review have been recently released to the public. To what extent, if any, should the issues raised in that Report have been considered and addressed during the currency of the compensation program?

The M.O.U. provided that the amount of compensation awarded should not be disclosed. Was confidentiality of validated claims of abuse maintained pending completion of criminal proceedings, if any, and should it have been?

Did the government deal in a fair and appropriate way with its employees, pending completion of investigations into allegations against them? Did the 1998 Memorandum of Agreement between the NSGEU and the Province appropriately address the legitimate interests of employees? Were "exonerations" appropriately addressed in the M.O.A. and later dealt with?

It has been suggested that it was fitting that employees have no role in the compensation process since government made no admissions of liability and, in any event, government's decisions to pay compensation did not bind employees in any way. Were file reviewer's decisions, other features of the compensation program and the interim status of employees dealt with in a way that was fair to the employees?

15. *How should government documentation respecting institutions, their residents and claims for compensation be organized and preserved?*

Commentary: Serious issues have been raised relating to the untimely discovery of potentially relevant documentation. To what extent were decisions made based upon inadequate documentation, when further documentation existed? Why were documents undiscovered or inaccessible? How are documents organized within the various government departments? How should they be organized and maintained?

Appendix C

Memorandum to Priorities & Planning Committee

MEMORANDUM

TO THE PRIORITIES AND PLANNING COMMITTEE

SEP 1994
RECEIVED

NUMBER:
DEPT.:
DATE:

SUBJECT: Shelburne Youth Centre and Sexual [illegible]

SUBMITTED BY: Honourable J. William Gillis, Minister of Justice

PREPARED BY: Gordon D. Gillis, Deputy Minister of Justice

DEPUTY MINISTER: Gordon D. Gillis

SUMMARY:

To evaluate and develop appropriate responses to incidents of sexual abuse at the Shelburne Youth Centre.

BACKGROUND

A lawsuit has been commenced naming the Province as a Defendant seeking damages for sexual assaults committed upon the Plaintiff, Peter Felix Gormley, while in the custody of the Shelburne Youth Centre. The assaults were committed by a staff member during the mid - to late - 1960's (there was a conviction). Attached to this Memorandum in Schedule "A" is a brief overview of the legal situation by Alison Scott, the solicitor for the Province.

In addition, two further notices of intended action have recently been filed, and it is expected that there will be a significant number of additional claims advanced within the near future. There is a major difficulty in discovering and assessing the factual situation as some of these incidents are alleged to have taken place many years ago.

OBJECTIVE

To determine a cost-effective, timely process for responding to actual and alleged incidents of sexual abuse at the Shelburne Youth Centre which will be acceptable to victims and the public.

KEY ISSUES

In developing an appropriate response a number of factors or criteria should be considered, such as:

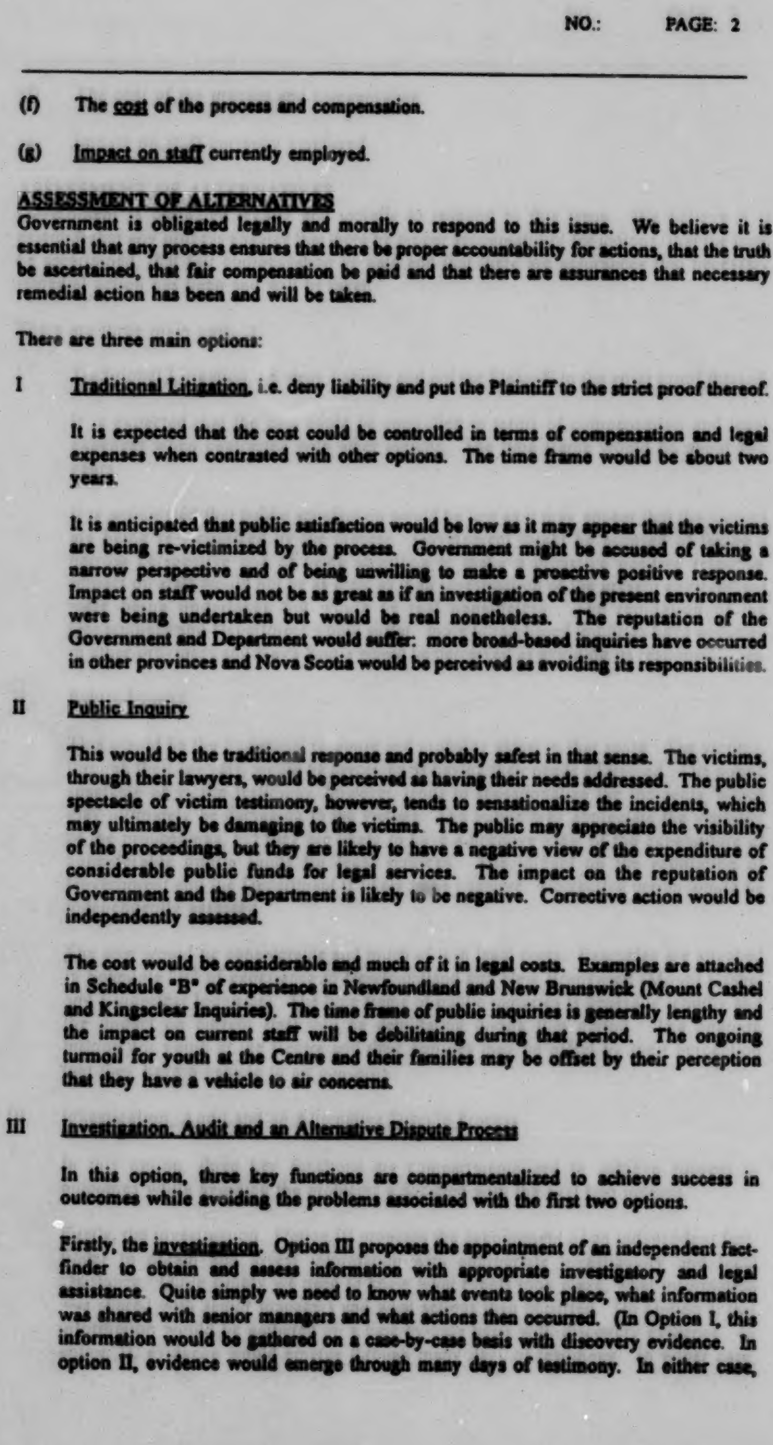
(a) Victim & Public confidence or satisfaction - there needs to be an assurance that justice has been done; that victims have been fairly treated through a process which is seen as fair and impartial.

(b) The need to ensure that corrective actions have been taken with policy and procedure in place to ensure that future incidents will be prevented.

(c) The reputation of the Government and the Department - that the response to the issue is thorough and conscientious and that those responsible are held accountable for their actions.

(d) The confidence and peace of mind for families of children currently in custody.

(e) The time frame involved.



(f) The cost of the process and compensation.

(g) Impact on staff currently employed.

ASSESSMENT OF ALTERNATIVES

Government is obligated legally and morally to respond to this issue. We believe it is essential that any process ensures that there be proper accountability for actions, that the truth be ascertained, that fair compensation be paid and that there are assurances that necessary remedial action has been and will be taken.

There are three main options:

I Traditional Litigation, i.e. deny liability and put the Plaintiff to the strict proof thereof.

It is expected that the cost could be controlled in terms of compensation and legal expenses when contrasted with other options. The time frame would be about two years.

It is anticipated that public satisfaction would be low as it may appear that the victims are being re-victimized by the process. Government might be accused of taking a narrow perspective and of being unwilling to make a proactive positive response. Impact on staff would not be as great as if an investigation of the present environment were being undertaken but would be real nonetheless. The reputation of the Government and Department would suffer: more broad-based inquiries have occurred in other provinces and Nova Scotia would be perceived as avoiding its responsibilities.

II Public Inquiry

This would be the traditional response and probably safest in that sense. The victims, through their lawyers, would be perceived as having their needs addressed. The public spectacle of victim testimony, however, tends to sensationalize the incidents, which may ultimately be damaging to the victims. The public may appreciate the visibility of the proceedings, but they are likely to have a negative view of the expenditure of considerable public funds for legal services. The impact on the reputation of Government and the Department is likely to be negative. Corrective action would be independently assessed.

The cost would be considerable and much of it in legal costs. Examples are attached in Schedule "B" of experience in Newfoundland and New Brunswick (Mount Cashel and Kingsclear Inquiries). The time frame of public inquiries is generally lengthy and the impact on current staff will be debilitating during that period. The ongoing turmoil for youth at the Centre and their families may be offset by their perception that they have a vehicle to air concerns.

III Investigation, Audit and an Alternative Dispute Process

In this option, three key functions are compartmentalized to achieve success in outcomes while avoiding the problems associated with the first two options.

Firstly, the investigation. Option III proposes the appointment of an independent fact-finder to obtain and assess information with appropriate investigatory and legal assistance. Quite simply we need to know what events took place, what information was shared with senior managers and what actions then occurred. (In Option I, this information would be gathered on a case-by-case basis with discovery evidence. In option II, evidence would emerge through many days of testimony. In either case, Government would need to retain experts and investigators). In Option III, the information-gathering would not take place in a public forum but the report of the independent investigator would be released to the public. Although the investigator would not have the power to compel witnesses to provide information, experience has shown that most individuals are prepared to do so. If, however, the investigator was unable to obtain sufficient information through this process, he/she could recommend to government that a public inquiry be established.

Secondly, an independent audit of present practices would be conducted to ensure that current policies and procedures are conducive to promoting proper behaviour on the part of staff.

Thirdly, if liability is revealed through the investigation, compensation could be determined through an alternative dispute resolution process. Alternative dispute resolution can proceed in one of three ways: negotiation; mediation (a process whereby a neutral third party assists the parties in reaching a consensus); or adjudication (a process whereby neutral third party is given the power to make a binding decision). Public release of the adjudicator's report would likely generate support for appropriate compensation.

The three components of Option III would be conducted by three distinct groups of people.

The most significant risk in proceeding with Option III is the public perception that Government is being evasive in not ordering a public inquiry. One of the major functions of the public inquiry is to establish responsibility. That would be acknowledged upfront in option 3. An appropriate communications strategy would reinforce the notion that government is prepared to accept responsibility, and would prefer to expend limited resources on compensation for victims and improvements to the juvenile justice system rather than lawyers' fees.

The integrity of the process will depend on the choice of investigator. If the individual is well-respected and perceived as neutral and at arms-length from Government and if the investigator's report is made public, then the process will likely be viewed as fair. The practical limitations of an investigation into incidents which took place many years ago cannot be ignored. Many of the persons who were employed with the Department of Community Services at the time are no longer in the employ of the department; some of them are deceased and some of them are quite elderly. These practical difficulties notwithstanding, it is imperative that those who might have been responsible for any wrong-doing be held accountable. This is necessary both to establish legal liability for punitive or exemplary damages and from the perspective of a moral need to know.

The audit, conducted by an acknowledged expert in the juvenile corrections field (possibly from another province), would provide an analysis of current policies and procedures and advice about corrective actions which should be taken immediately by Government.

The costs associated with this option will be less than for a public inquiry, but not significantly less than litigation. However, the time-frame would be shorter and corrective actions can be implemented as soon as they are as identified. The investigation should commence within sixty days. It would be completed within ninety days of start-up.

There are no budgetary provisions for any of the above options, either within the Department of Community Services or (effective August 1, 1994) the Department of Justice.

RECOMMENDATION

That Option III be approved in principle and that the Department be requested to prepare a detailed workplan containing terms of reference for the investigation, audit and alternative dispute resolution process, budget, and time-frame together with proposed nominees of individuals to perform the roles of investigator and auditor.

Respectfully submitted,

JW Gillis

Honourable J. William Gillis
Minister of Justice

Halifax, Nova Scotia
September 30 , 1994

Schedule "A"

Nova Scotia

Department of
Justice

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Fax No: 902 424-4556

Our phone no: 424-6793

Our file no: 27-94-0085-03

MEMORANDUM

TO: Gordon Gillis, Deputy Minister

AWS **FROM:** Alison W. Scott, Senior Solicitor

DATE: June 28, 1994

RE: **Peter Felix Gormley v. A.G.N.S. and Patrick MacDougal**

As indicated earlier, this case involves a claim by Mr. Gormley against the Province for abuse he suffered while incarcerated at the Shelburne Boys School in the mid to late 60's. Mr. MacDougal, a former employee of the School, was convicted of sexual assault in relation to Mr. Gormley about a year ago. The Crown led evidence of sexual touching and rape of Mr. Gormley that resulted in the convictions. Mr. MacDougal is presently serving a five year sentence in Westmorland for that assault and four others he committed against other boys at the School. He subsequently pled guilty to six more counts against six other boys and was sentenced to an additional six years. He is 75 years of age presently. I understand the RCMP are investigating allegations in relation to a twelth boy who, like the others, was an inmate of Shelburne in Mr. MacDougal's charge.

Mr. Gormley has complied with the provisions of the Proceedings Against the Crown Act. I accepted service of the Originating Notice Action effective June 22, 1994. I am now seeking instructions on the Defence.

The first issue to be determined is whether to plead the *Limitation of Actions Act*. The Supreme Court of Canada recently held that ordinary limitation periods do not operate against victims of sexual assault without regard to when the victim first became aware that the abuse caused harm in his or her life . (K.M. v. H.M. (1992), 14 C.C.L.T. 1.) In the K.M. case, the limitation period was not considered applicable until the victim was in psycho therapy, even though she had not suppressed her memory of the acts that gave rise to the claim. The reasoning suggests it is only when the fact of the harm is appreciated and the victim is psychologically capable of handling the stress of bringing an action will the Limitation periods start to run.

In Mr. Gormley's case, there is indication from the transcript of the proceedings before the Court in Mr. MacDougal's trial that Mr. Gormley has been in treatment for at least two years or more at the date of trial. If this can be substantiated, we may have a complete defence to the claim. It is too soon, however, to tell whether this defence is available for certain, and certainly we cannot tell when Mr. Gormley formed the ability to commence this action from a psychological point of view. My recommendation on this point is that we plead the *Limitation of Actions Act* to preserve our position until discovery is completed and we are in a better position to predict the likelihood of the success of the defence. In addition, by pleading the *Limitations Act*, we preserve a factor that will be relevant to the Plaintiff in considering any offer of settlement.

As to the substance of the allegations against the Province, it is useful to consider the actions forming the basis of the claim in three categories. The first category are those actions which formed the basis of the criminal proceedings against Mr. MacDougal. It seems incongruous for the Crown that has just convicted Mr. MacDougal of these assaults to plead that the events upon which the conviction was entered, did not take place. In this regard, from a policy point of view, we should consider admitting the allegations insofar as they relate to the actions forming the basis of the convictions, if this is at all possible.

A second category of allegations in the pleadings presented by the Plaintiff, go beyond the actions of MacDougal which formed the basis of the convictions. Liability is alleged in the Statement of Claim for actions which were not a part of the criminal process including, being forced to witness the acts of MacDougal and others against other boys, physical assaults in addition to the sexual assaults and phycological abuse at MacDougal's hands. The incidents of fondling appear to be greater in frequency than alleged by the Crown in the criminal trial. Finally, in this category is an allegation that other staff of the institution also abused the Plaintiff sexually, mentally and physically.

In addition there are essentially allegations of failure to run a safe institution by failure to have appropriate protocols and failure to properly supervise employees. This is the third category of activity alleged to form the basis of the claim.

It is my understanding the instances of abuse by an employee other than MacDougal refer to allegations against a former employee who committed suicide. We have no way of assessing the second category of allegations without going to Discovery. I have been to The Shelburne School in search of records and save and except records of admission and discharge of inmates, nothing exists. The social work and educational files have all been destroyed through the usual record retention practices of the Institution. A cautious approach to these allegations is to deny them as facts in the Statement of Defence, and do our best to ascertain whether there is truth to the allegations in the Discovery process. If there appears to be truth to these allegations settlement in relation to those offenses should be considered after Discovery.

As to the third category of allegations, we again face the absence of a factual record to substantiate or refute the allegations. There is also some question as to the nexus between some of the alleged offensive action in this category and the Plaintiff's injury (i.e. the Defendant's firing and rehiring of MacDougal in 1975 and 1978 respectively.) Unlike the second category, however, we need not be completely dependent upon the discovery process to determine the factual underpinnings that would tend to substantiate or refute responsibility as alleged. If available at all, some or all of the relevant information may be obtainable through the Department of Community Services. Unfortunately the Civil Procedure Rules may require defence to be filed with respect to these allegations prior to the completion of the search of departmental records and memories.

In my opinion, it may be premature to abandon any potential defence at this early stage in the proceeding. If we file defence to all allegations, with the possible exception of the first category referred to above, we preserve a bargaining position for settlement. The discovery process and our own research will place us in a better position to determine the extent of liability.

By way of information, it may be useful to consider the amount of damages that have been assessed against parents and or close family friends who abused children. None of the five cases located included a component for lost wages, but none exceeded $170.000.00. Of the $170,000.00, $100,000 was prejudgment interest. In most cases, general damages have not exceeded $65,000.00. There is also some debate about the availability of aggravated or exemplary damages where a criminal conviction has been entered. The relatively small amount of Court awards compared to that claimed should be borne in mind in assessing the direction for the case. It might be useful to pursue some sort of admission of liability but refer the issue of damages to court. That issue is appropriate for another day however.

Please provide me with instructions concerning the approach you wish to take in guiding this file through the litigation and/or settlement process.

AS/kep

SCHEDULE "B"

Mount Cashel and Miller Inquiries

MILLER INQUIRY (New Brunswick)

Focus of Inquiry:

- To examine allegations of sexual misconduct including sexual abuse that were made by former inmates of the New Brunswick Training School at Kingsclear.
- Inquiry Terms of Reference are attached.

Time Frame:

- Commenced December 10, 1992. Hearings will reconvene on September 15, 1994. Six weeks will be required for lawyers to submit briefs. Three weeks to review briefs. Summation should occur by mid-November followed by writing of report by Justice Miller. Written decision expected prior to March 31, 1995.
- Time frame for establishment of Commission was eleven months (hiring investigators, setting up office, etc.) before hearings commenced.

Cost of Inquiry:

- Approximate inquiry costs will be $1 million. Costs to date (August 15, 1994) are in the vicinity of $850,000.00. These costs represent the expense of the Commission only.
- Additional government costs have involved staff secondments to serve as liaison between Commission staff and government plus legal counsel.

General Comments:

- Commission staff include Justice Miller, Mr. Bill Goss (private bar, counsel to commission), one junior associate counsel Mr. George Kalinowsky, one chief investigator plus 1-2 assistant investigators (retired police) at any time.
- Individual lawyers include commission counsel, counsel for the government of New Brunswick, CUPE lawyer, two victims lawyers (paid by commission), counsel for the City of Fredericton, RCMP lawyer, lawyers for individuals who are giving evidence.
- Both sides of inquiry have interviewed witnesses and statements have not been shared between sides.
- Due to non-disclosure, lawyers do not know what the witnesses will say. They are therefore not as prepared as they would be in a criminal trial.
- Paper work volume is extremely heavy.
- Goss informed that the inquiry was initiated due to suspicion of a coverup and a developing body of evidence that would suggest that a coverup of sexual misconduct activities had occurred. Statements by victims suggested that government officials had been aware of the problem decades ago and that the problem had not been dealt with.

Schedule "B"
Page 2

MOUNT CASHEL INQUIRY

Focus of Inquiry:

- To consider and review allegations of sexual misconduct at the Mount Cashel Orphanage in Newfoundland.
- Terms of reference for the inquiry are attached.

Time Frame:

- With normal weekend and holiday recesses, plus periods for planning and reorganization, the public inquiry extended over the period of September 1, 1989, to June 29, 1990, for a total of 150 actual hearing days. With the assistance of counsel, secretary to the inquiry and two secretaries, Commissioner Hughes wrote his report over the period December 1990 to march 1991. The report was formally presented to government on May 31, 1991.
- Compensation to victims was not part of the Terms of Reference. This is a separate civil matter presently before the courts.

Cost of Inquiry:

- The total cost of inquiry was $2,539,000.00. Remuneration to the chair, two full-time counsel and part-time legal assistance represented 63 percent of this cost. The balance covered the costs of remuneration to two full-time investigators, commission staff, travel and accommodation costs for commission officials and witnesses, and other administrative expenditures.

General Comments:

- Contacts informed that, if criminal trails are to occur, the inquiry should await the outcome of the criminal trials.
- Inquiry should focus on the systemic problem that caused the offence to happen and should ask whether problems exist now and what corrective action should be taken to prevent a reoccurrence.
- Minutes of the Executive Order that creates an inquiry must be very clear regarding expectations and parameters.
- Use of the media in terms of video was beneficial during Mount Cashel inquiry. The local cable television company agreed to tape proceedings. Spin-off benefits include:
  - security of hearing room (very few in attendance, interested parties watched proceedings from offices or other locations)
  - no need for transcripts because of the video tape
  - enhanced security in inquiry room due to low number in attendance
  - only costs was salary of technician to control buttons of video in video room
  - avoid massive transcription requirement

Appendix D

Stratton Report Advertisement

The Honourable Stuart G. Stratton, Q.C.
Director of Investigations
Nova Scotia Residential Centres

Telephone: (902) 424-7479
Fax: (902) 424-6960

PO Box 972 CRO
Halifax NS B3J 2V9

FOR IMMEDIATE RELEASE

PUBLIC STATEMENT

ISSUED BY: The Honourable Stuart G. Stratton, Q.C.
Director of Investigations

TO: Media Outlets

I have been appointed by the Nova Scotia Minister of Justice to lead an independent investigation into incidents and allegations of sexual and other physical abuse which occurred at the former Shelburne School for Boys; the Nova Scotia Youth Training Centre, Truro; the Nova Scotia Residential Centre, Truro; the Children's Training Centre, Sydney; and the Children's Training Centre, Dartmouth.

The primary focus of this investigation will be from about 1956 until the mid 1970's.

I am asking for the media's assistance.

In carrying out this investigation, I want to communicate with any former residents who were subjected to either sexual or other physical abuse when they resided in any of these residential institutions; and with any one else who may have any information with respect to any such incidents or allegations.

All of these communications will be treated confidentially.

I will appreciate anything you can do to make my availability known to anyone who can assist my investigation.

Contact me or my investigator, Mr. Harry E. Murphy. Mr. Murphy is a retired RCMP Superintendent with more than 30 years experience as an investigator. Our telephone numbers are (902) 424-7479 and (902) 424-7410. Our mailing address is PO Box 972 CRO, Halifax, NS, B3J 2V9.

The success of this investigation will require the cooperation of all those persons who were, or are, involved in any way. I have already been assured of the Government's complete cooperation in my investigation.

While I can understand your interest in this matter, I will not be granting any media interviews.

Everything that I have to say with regard to the conduct and results of this investigation will be in my report to the Minister of Justice, which will be made public.

I appreciate your cooperation in this regard.

Stuart G. Stratton

The Honourable Stuart G. Stratton, Q.C.
Director of Investigations

Child Abuse Investigation

I have been appointed by the Nova Scotia Minister of Justice to lead an independent investigation into incidents and allegations of sexual and other physical abuse which occurred at the former Shelburne School for Boys; the Nova Scotia Youth Training Centre, Truro; the Nova Scotia Residential Centre, Truro; the Children's Training Centre, Sydney; and the Children's Training Centre, Dartmouth.

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Stuart G. Stratton

The Honourable Stuart G. Stratton, Q.C.
Director of Investigations

CHILD ABUSE INVESTIGATION

I have been appointed by the Nova Scotia Minister of Justice to lead an independent investigation into incidents and allegations of sexual and other physical abuse which occurred at the former Shelburne School for Boys; the Nova Scotia Youth Training Centre, Truro; the Nova Scotia Residential Centre, Truro; the Children's Training Centre, Sydney; and the Children's Training Centre, Dartmouth.

The primary focus of this investigation will be from about 1956 until the mid 1970's.

In carrying out this investigation, I want to communicate with any former residents who were subjected to either sexual or other physical abuse when they resided in any of these residential institutions; and with any one else who may have any information with respect to any such incidents or allegations.

Please be assured that all communications will be treated confidentially.

Please contact me or my investigator, Mr. Harry E. Murphy. Mr. Murphy is a retired RCMP Superintendent with more than 30 years experience as an investigator. Our telephone numbers are (902) 424-7479 and (902) 424-7410. Our mailing address is P.O. Box 972 CRO, Halifax, N.S., B3J 2V9.

The success of this investigation will require the cooperation of all those persons who were, or are, involved in any way. I have already been assured of the Government's complete cooperation in my investigation.

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I appreciate the media's cooperation in this regard.

The Honourable Stuart G. Stratton, Q.C.
Director of Investigations

Appendix E

July 4, 1995 Memorandum to Cabinet

MEMORANDUM
TO THE CABINET

NUMBER: MP1029
DEPT.: JUSTICE/COMMUNI SERVICES
DATE: July 4/95

SUBJECT: Response to Investigation Into Institutional Abuse (Stratton Report)

SUBMITTED BY: The Honourable William Gillis, Attorney General, and
The Honourable James Smith, Minister of Community Services

PREPARED BY: Paula Simon, Director, Victims' Services Division
Alison W. Scott, Senior Solicitor

DEPUTY MINISTER: D. William MacDonald
Patricia Ripley

SUMMARY: Approval to move forward to assist the victims of abuse in Provincial institutions by (a) providing emergency counselling to the victims; (b) agreeing in principle to the Alternative Dispute Resolution (ADR) process; (c) funding a three-year Institutional Abuse Unit; (d) sole-source a contract with Family Service Association; and (e) authorize a budget allocation to the Department of Justice to cover the costs as outlined in Appendix C.

BACKGROUND:

On December 1, 1994, The Honourable Stuart Stratton, Q.C., former Chief Justice of New Brunswick, was appointed to direct an investigation into sexual and other abuse at the former Shelburne School for Boys, the Nova Scotia Youth Training Centre (Truro), the Nova Scotia Residential Centre (Truro), the Children's Training Centre (Sydney), and the Children's Training Centre (Dartmouth). The Shelburne Youth Centre, formerly the Shelburne School for Boys, was transferred to the Department of Justice in August, 1994. The Department of Community Services continues to operate the other four institutions. The terms of reference of the investigation were as follows:

1) investigate the incidents of sexual and other physical abuse of residents that occurred or are alleged to have occurred at the institutions;

2) investigate and determine the practices and procedures in place at the institutions that either permitted or hindered the detection of abuse of residents;

3) investigate and determine whether any employees in the institutions or any public officials were aware of abusive behaviour of staff toward residents; and

4) investigate and determine what steps, if any, were taken by employees or officials in reference to any such abuse

In announcing plans to undertake the investigation, the House of Assembly was informed in November 1994 that the Government would explore an Alternative Dispute Resolution process.

Stratton will submit his report to the Minister of Justice on June 30, 1995. Within two to three weeks of its submission, the Government will be expected to publicly respond to the report with an action plan. One aspect of the action plan will deal with compensation to victims.

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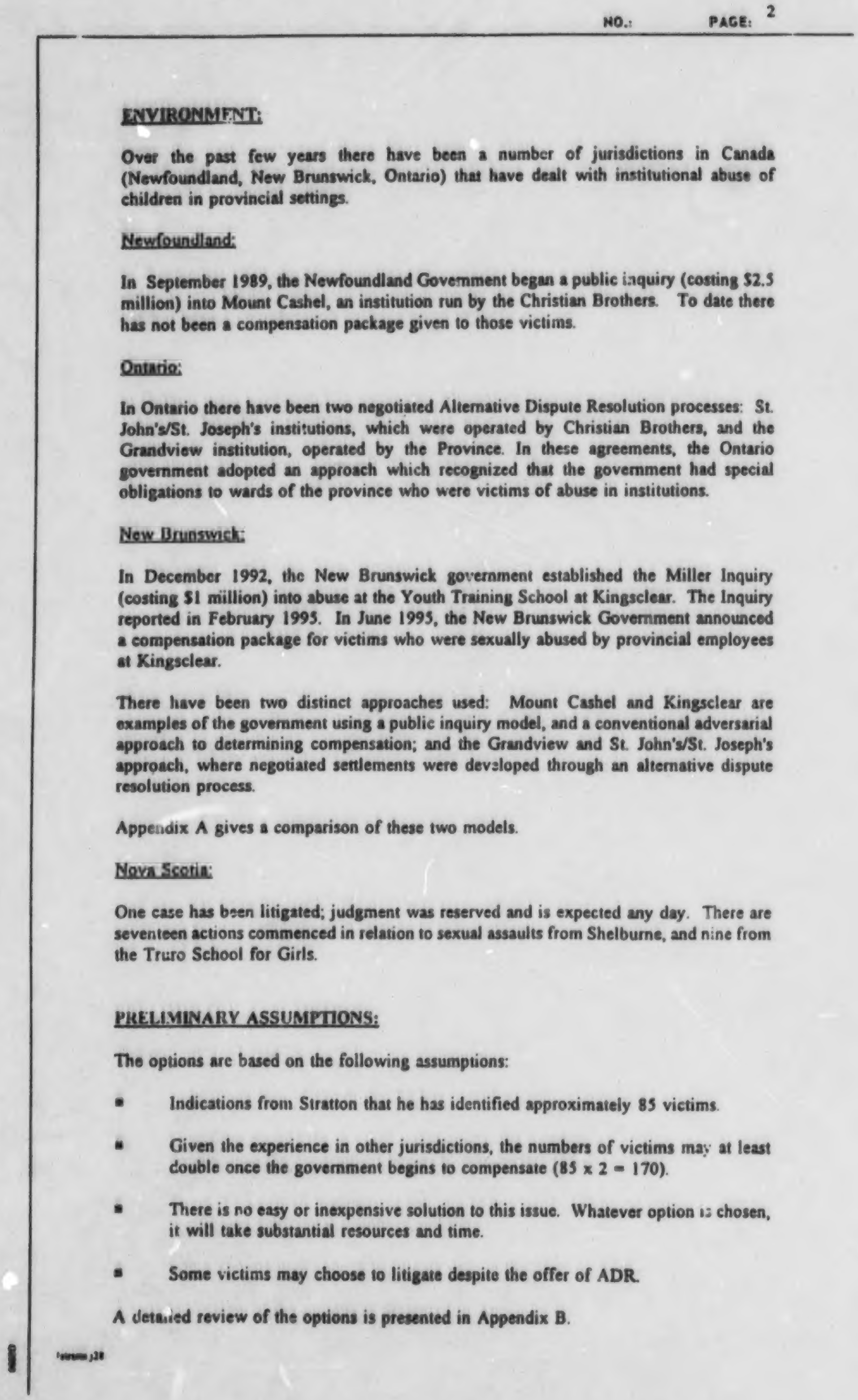

ENVIRONMENT:

Over the past few years there have been a number of jurisdictions in Canada (Newfoundland, New Brunswick, Ontario) that have dealt with institutional abuse of children in provincial settings.

Newfoundland:

In September 1989, the Newfoundland Government began a public inquiry (costing $2.5 million) into Mount Cashel, an institution run by the Christian Brothers. To date there has not been a compensation package given to those victims.

Ontario:

In Ontario there have been two negotiated Alternative Dispute Resolution processes: St. John's/St. Joseph's institutions, which were operated by Christian Brothers, and the Grandview institution, operated by the Province. In these agreements, the Ontario government adopted an approach which recognized that the government had special obligations to wards of the province who were victims of abuse in institutions.

New Brunswick:

In December 1992, the New Brunswick government established the Miller Inquiry (costing $1 million) into abuse at the Youth Training School at Kingsclear. The Inquiry reported in February 1995. In June 1995, the New Brunswick Government announced a compensation package for victims who were sexually abused by provincial employees at Kingsclear.

There have been two distinct approaches used: Mount Cashel and Kingsclear are examples of the government using a public inquiry model, and a conventional adversarial approach to determining compensation; and the Grandview and St. John's/St. Joseph's approach, where negotiated settlements were developed through an alternative dispute resolution process.

Appendix A gives a comparison of these two models.

Nova Scotia:

One case has been litigated; judgment was reserved and is expected any day. There are seventeen actions commenced in relation to sexual assaults from Shelburne, and nine from the Truro School for Girls.

PRELIMINARY ASSUMPTIONS:

The options are based on the following assumptions:

- Indications from Stratton that he has identified approximately 85 victims.
- Given the experience in other jurisdictions, the numbers of victims may at least double once the government begins to compensate (85 x 2 = 170).
- There is no easy or inexpensive solution to this issue. Whatever option is chosen, it will take substantial resources and time.
- Some victims may choose to litigate despite the offer of ADR.

A detailed review of the options is presented in Appendix B.

OPTIONS I - IV (Summary):

	Time Frame	Cost[1]
I) ADR process - victims participate in negotiating terms of settlement (Grandview model)	2 years and 8 months	$13,157,000
II) Government determines compensation package unilaterally (Kingsclear model)	3 years	$10,857,500 to $21,057,500
III) Remain silent and deal only with the lawsuits as they proceed through court.	5 years	$11,395,000
IV) Litigate the first few claims and settle the rest based on the court's ruling.	3 years	$22,050,000

INSURANCE CONSIDERATIONS:

Insurance policies have recently been located which might provide insurance coverage for the injuries caused to former residents. The Department of Justice has retained Robert Purdy, Q.C., to render an opinion on whether the policies cover the risk of sexual assaults and the associated damages. We have also asked for an opinion as to the effect on insurance coverage of entering into negotiations for an ADR process prior to the resolution of our insurance position with our insurers. The opinion is expected within a couple of weeks.

If the Province waits to conclude its insurance position in individual cases before entering negotiations to establish an ADR process, we can expect a delay of up to two years or more. Assuming Mr. Purdy's advice permits it, it is preferable to enter negotiations immediately.

ANY PUBLIC COMMENTS BY MINISTERS OR SENIOR OFFICIALS REGARDING THE GOVERNMENTS LIABILITY AT THIS POINT COULD JEOPARDIZE POSSIBLE COVERAGE.

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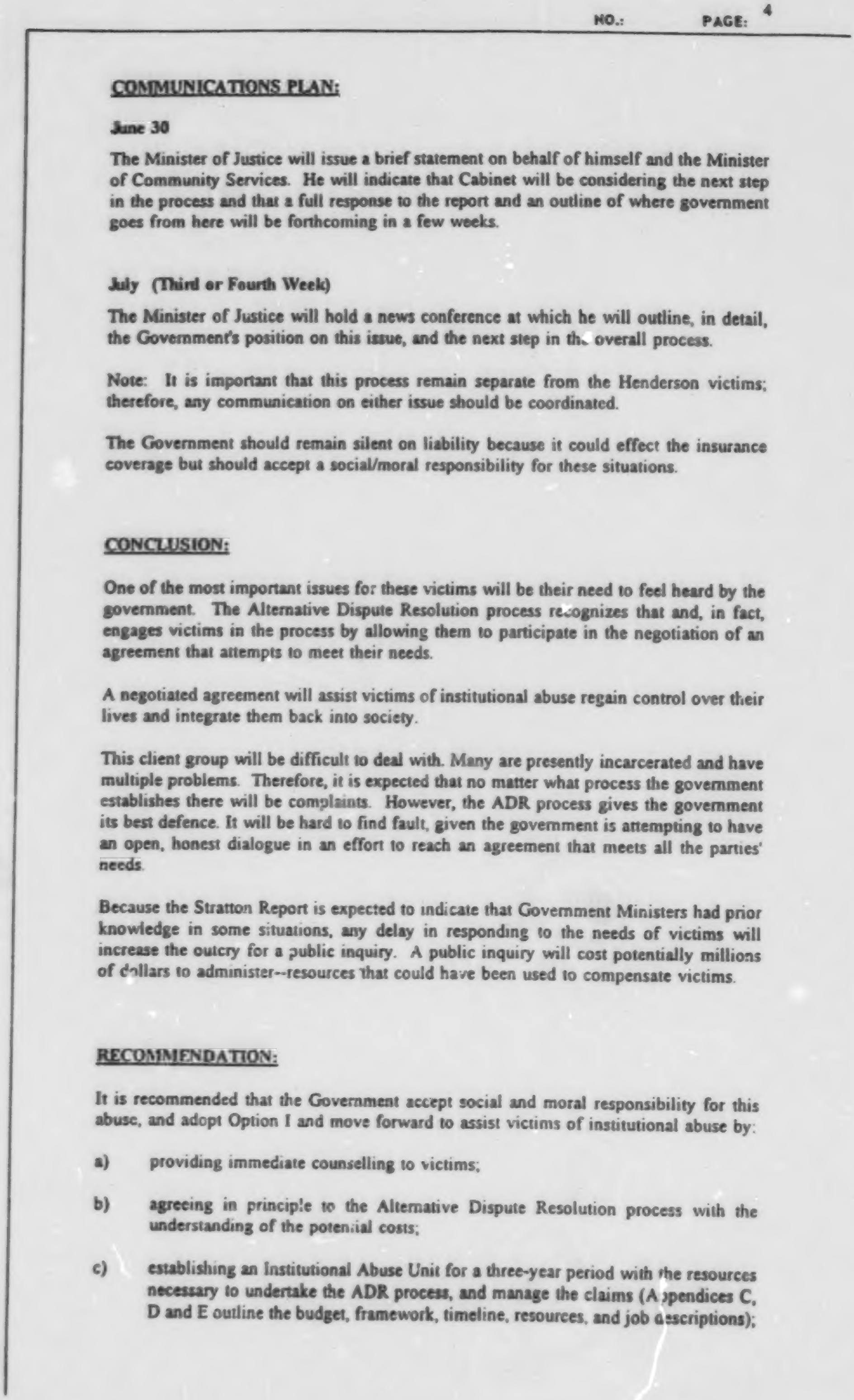
[1] Cost estimates are based on data such as case law and attributed costs of litigation. Because the number and disposition of claimants are unknown, the costs are presented to reflect order of magnitude and not precision.



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COMMUNICATIONS PLAN:

June 30

The Minister of Justice will issue a brief statement on behalf of himself and the Minister of Community Services. He will indicate that Cabinet will be considering the next step in the process and that a full response to the report and an outline of where government goes from here will be forthcoming in a few weeks.

July (Third or Fourth Week)

The Minister of Justice will hold a news conference at which he will outline, in detail, the Government's position on this issue, and the next step in the overall process.

Note: It is important that this process remain separate from the Henderson victims; therefore, any communication on either issue should be coordinated.

The Government should remain silent on liability because it could effect the insurance coverage but should accept a social/moral responsibility for these situations.

CONCLUSION:

One of the most important issues for these victims will be their need to feel heard by the government. The Alternative Dispute Resolution process recognizes that and, in fact, engages victims in the process by allowing them to participate in the negotiation of an agreement that attempts to meet their needs.

A negotiated agreement will assist victims of institutional abuse regain control over their lives and integrate them back into society.

This client group will be difficult to deal with. Many are presently incarcerated and have multiple problems. Therefore, it is expected that no matter what process the government establishes there will be complaints. However, the ADR process gives the government its best defence. It will be hard to find fault, given the government is attempting to have an open, honest dialogue in an effort to reach an agreement that meets all the parties' needs.

Because the Stratton Report is expected to indicate that Government Ministers had prior knowledge in some situations, any delay in responding to the needs of victims will increase the outcry for a public inquiry. A public inquiry will cost potentially millions of dollars to administer--resources that could have been used to compensate victims.

RECOMMENDATION:

It is recommended that the Government accept social and moral responsibility for this abuse, and adopt Option I and move forward to assist victims of institutional abuse by:

a) providing immediate counselling to victims;

b) agreeing in principle to the Alternative Dispute Resolution process with the understanding of the potential costs;

c) establishing an Institutional Abuse Unit for a three-year period with the resources necessary to undertake the ADR process, and manage the claims (Appendices C, D and E outline the budget, framework, timeline, resources, and job descriptions);

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d) contracting immediately (sole source) with the Family Service Association[1] to administer the interim counselling agreements and to commence the organizational development assessment regarding the likelihood of these victims being able and willing to structure themselves into a group; and

e) authorizing a budget allocation to the Department of Justice to cover the costs as outlined in Appendix C.

Respectfully submitted,

James G. Smith

The Honourable William Gillis
Minister of Justice

The Honourable James Smith
Minister of Community Services

Halifax, Nova Scotia
June 30th, A. D., 1995

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[1] Family Service Association (FSA) is a not-for-profit counselling organization. It has a long history of expertise in the area of sexual abuse. It is the only not-for-profit counselling organization which has a provincial and national network of sister organizations. This is important because the victims live in different parts of Nova Scotia and Canada.

Family Service Association is a well-respected organization in Nova Scotia, and there are no other comparable organizations in the Province.

APPENDIX A

	GRANDVIEW	KINGSCLEAR
Negotiations	Negotiations took place between the GSSG (Grandview Survivors Support Group) which is funded by the government, their solicitor and the government negotiators. The GSSG represents all the complainants and one agreement was negotiated. This was an attempt to empower the survivors within the process and limit the number of lawyers involved. Limiting the number of lawyers would potentially speed up the process and keep the legal costs down	**Each client will be represented by legal counsel and will have to present and negotiate their claim with a Government solicitor on a one-on-one basis. This will represent significant delays in settling agreements and will generate substantial legal bills for the victims.**
Terms	All the terms and conditions within the agreement were negotiated between the parties. This ensures a greater buy-in and allows for a more creative resolution than potentially a large financial award.	**The terms of the agreement were announced in a press release and seem to be non-negotiable. This is a "top down" process. The government has assumed what victims want and has created a potential risk of a low buy in by the victims.**
Legal Representation	The Government paid for the GSSG legal representation during the negotiations. It is also paying $1,000 per client to have a lawyer go through the agreement with each victim to assist them with the decision to enter into the agreement and assist them with their application for compensation. This process has tried to be as lawyer-free and as client-driven as possible.	**The victim can pay their lawyer up to 20% of their award for legal fees. The issue here is that most of these victims have had legal representation for some time and one can assume that their legal bills are already substantial. The outstanding question is how is the government going to police the victims to prevent them from paying their outstanding legal bills with their remaining award.**
Emergency Counselling	Counselling has been provided to anyone that requested it as long as it could be established that they were a ward of the institution.	same.
Ongoing Counselling	Provided to a maximum of $5,000 per year. Can be extended if needed.	same,
Training and Upgrading	Provided in addition to their monetary award.	Comes out of any award the victim receives.
Other Services	Provides funding for the GSSG and a help line.	n/a
Maximum Award	$60,000 plus special damages (education, equipment, tattoo and scar removal, counselling legal fees)	**$120,000 plus counselling, all other heads of damage are deducted from their award**
Total Costs????	**At this point, it is too early to do a cost comparison of the two programs.**	

APPENDIX B

OPTION I	PROS	CONS	TIME FRAME	COSTS
ADR process - victims participate in negotiating terms of settlement (Grandview model)	Immediate action will develop an atmosphere more conducive to a negotiated settlement. Immediate action will be seen as a fair manner to deal with the victims. A negotiated agreement will prove to be no more expensive than court settlements and potentially less. Therefore, the cost may not be avoidable, but the process can be one which is much more positive and valuable for the victims. The government will be perceived as compassionate and attempting to do the right thing. This option also acknowledges that this issue is as much a social issue as a legal one, requiring an innovative approach to the needs of victims.	Lawyers who presently represent victims may say that the Government is trying to manipulate victims into accepting less money.	2 years and 8 months; work plan attached	Awards: $11,440,000* Support services: (FSA, 1-800, legal advice) 963,000 Administration: 584,000 Adjudicators: 170,000 Total: $13,157,000 *See Appendix C.

APPENDIX B, Continued

OPTION II	PROS	CONS	TIME FRAME	COSTS
Government determines compensation package unilaterally (Kingsclear model)	Short term public support because the government will appear to be taking decisive action The government will appear to be consistent with New Brunswick.	Top-down process that will potentially alienate victims who then may go public with their anger. It is difficult to engage in a negotiation process when the government has laid all its cards on the table. It will cost about the same amount of money, but you will not have the victims on side. We will lose the opportunity to engage in a meaningful dialogue with the victims which would validate their need to be heard. This is particularly important to victims and the consequences of ignoring this could be great.	3 years	Awards: $120,000* x 170= $20,400,000 If the average award was $60,000 x 170 = 10,200,000 Counselling: 312,500 Administration: 345,000 Total: (Range from $10,857,500 to $21,057,500 *$120,000 per award is based on the litigated cases over the past 12 months. Awards have been steadily increasing over the past three years.

APPENDIX B, Continued

OPTION III	PROS	CONS	TIME FRAME	COSTS
Remain silent and deal only with the lawsuits as they proceed through court and not settle any of the lawsuits.	It will be some time before these cases are settled in court, and therefore the government could hold off on spending regarding damages for quite a while yet. With litigation, fewer victims will come forward. Victims' claims will be tested more thoroughly, possibly reducing some awards and discouraging other victims from making claims.	It will cost approximately $145,000 for the government to litigate each claim. There will be mounting public pressure for the government to do something after the Stratton report. A lack of a compensation plan will be seen as cruel and mean spirited. If the Stratton report finds that Ministers of Government knew of the abuse and the Government does nothing for the victims, pressure will build to have a public inquiry. Only the more serious victims will come forward to pursue litigation. Therefore you will be dealing with potentially higher awards by the court. It may cost more to litigate, depending on the awards that the victims will receive. The government will be criticized for spending money to fight victims in court, rather than using the money for services. Repudiates previous commitment.	5 years	Fewer victims will come forward, to litigate: 85 victims ÷ 2 = 43 Litigation costs: $145,000* x 43 = $6,235,000 Awards: $120,000** x 43 = 5,160,000 Total: $11,395,000 Note: it does not include court costs (i.e., judges, court clerks, and sheriffs, etc.) or staff time of Community Services. *Litigation costs - lawyers (two), secretary, paralegal, article clerk, disbursements. **$120,000 per award is based on the litigated cases over the past 12 months. Awards have been rising steadily over the past three years.

APPENDIX B, Continued

OPTION IV	PROS	CONS	TIME FRAME	COSTS
Litigate the first few claims and settle the rest based on the court's ruling.	It buys the government some time. Less costs in litigation. Victims' claims will be tested more thoroughly, possibly reducing some awards and discouraging other victims from making claims.	The more difficult cases are probably going to move forward first, and therefore there is potential for the court to award a substantial amount, leaving the government trying to settle these agreements in a disadvantageous position. Once the government has been to court and liability has been established the ability to enter into an ADR process is lost. The government will still have to establish a short term structure to deal with the claims. The public will see this process as a delay tactic and will not understand why the government did not begin a dialogue with the victims from the beginning.	3 years	Litigation: 10 suits (10 x $145,000) $1,450,000* 170 suits x $120,000** 20,400,000 Administer claims: 200,000 Total: $22,050,000 *Litigation costs - based on two lawyers, paralegal, article clerk, secretary, disbursements. Does not include: court time (judges, court clerks, sheriffs, etc.) or staff time from Community Services. **$120,000 per award is based on the litigated cases over the past 12 months. Awards have been steadily increasing over the past three years.

APPENDIX C

OPTION I: BUDGET (000's)

	1995/96 (8 months)	1996/97	1997/98	1998/99	COMMENTS
SUPPORT SERVICES for VICTIMS					
Interim Counselling	63	250			
Contracts Community Organization	40	100	100	100	
Legal Counsel	50	200			
1-800 Line	20	30	10		
TOTALS:	173	580	110	100	
AWARDS					Projected Awards are based on the Grandview Experience
Counselling			850		85 clients at $10,000 each
Pain and suffering awards			8,500		170 clients at $50,000 each
Education funds			850		170 clients at $5,000 each
Tattoo and scar removal			680		170 clients at $4,000 each
Contingency			510		170 clients at $3,000 each
Recorder			50		
TOTALS:			11,440		
ADMINISTRATION					
Staffing	112	268	102	102	
Adjudicators			170		
TOTALS:	112	268	272	102	
OVERALL TOTALS:	285	848	11,822	202	
TOTAL BUDGET, 1995/96 - 1998/99 = $13,157					

APPENDIX D

FRAMEWORK FOR ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution process is designed to aid parties in resolving their differences without a formal judicial proceeding. The ADR process described herein is based on the Grandview (Ontario) experience:

PHASE I: PRE-ALTERNATIVE DISPUTE RESOLUTION ACTIVITIES (8 Months)

a) Provide immediate counselling upon request. Interim counselling should be provided to all victims as long as it can be validated that they were a resident of one of the five institutions.

b) Establish a 1-800 crisis line which will give victims emergency support.

c) Sole-source a contract with Family Service Association (FSA) to:

   1) Provide a non-government contact point for victims.

   2) Assess whether it is possible for the victims to organize themselves into a group for the purpose of negotiating with the Government; and, if so, provide organizational assistance to the victims in the establishment of a group.

   3) Administer the interim counselling.

PHASE II: ALTERNATIVE DISPUTE RESOLUTION PROCESS (12 Months)

The Alternative Dispute Resolution model will use a negotiations process, where the parties will engage in a series of meetings to reach an agreement.

It is hoped that by this point the victims will have been able to organize themselves into an advocacy group. It is essential for this process that the Government be able to negotiate with no more than one or two groups.

After these group/groups have been formed, the Government will pay for their legal representation.

The Government, represented by a chief negotiator and legal counsel, will meet with the groups' representatives and their legal counsel to discuss compensation.

The objective of the negotiations is to reach an agreement on amounts for compensation based on degree of seriousness of the incidents.

PHASE III: ADJUDICATIONS (12 Months)

Upon completion of the negotiations, each victim will have the choice to come into the adjudication process. If they choose to participate in the adjudication, they will be asked to sign a waiver which eliminates their option to litigate against the Government.

Each victim must file a claim to be assessed by an adjudicator. The victim can choose to submit his/her documents and not have a formal hearing, at which point the adjudicator will complete a review of the file and make a compensation award. Alternatively, the victim can choose to have a hearing with the adjudicator. Each hearing is expected to take two to three hours.

The decision of the adjudicator is final.

APPENDIX D, Continued

PHASE IV: FACILITATE SERVICES (12 Months)

There will be many service delivery issues arising from the negotiated agreements that will need follow-up, for example, working with other Government departments to ensure access to education, training and health care services; and facilitating the provision of long-term counselling.

It will be important to have staff in place to monitor the agreements for counselling and other services.

APPENDIX E

STAFF POSITIONS

Chief Negotiator/Team Director:

Establish and maintain structure to commence work on this issue, take the lead role in negotiations, provide senior level coordination and policy management, establish and chair the Interdepartmental Committee on Abuse in Provincial Institutions, monitor the development of safeguards for prevention of abuse in children's facilities, coordinate the development of standards and protocols within Departments.

Program Coordinator:

Take the lead role in dealing directly with the clients and meeting their needs, the development, implementation and monitoring of programs designed to meet the needs of the victims, such as psycho-educational assessments, educational/vocational training, financial counselling, administer and maintain the contractual agreements with outside agencies, be the departmental liaison for the client group.

Financial Administrator:

Administer the payments, oversee financial requirements for the project, develop procedures, audit, and automated processes to maintain relevant statistics and financial data for use in budget reporting, and forecasting.

Secretary:

Provide administrative support to the Chief Negotiator and the Program Coordinator.

Legal Counsel:

To assist with the negotiations, advise and assist with all aspects of the investigation and processing of the settlement agreements, assist with the policy issues and the development of protocols in provincial institutions.

Investigators:

(Full-time, in order to process the claims quickly) Coordinates and implements investigations into circumstances of the injuries sustained by victims, determines scope of investigation and methodologies needed to carry out an effective investigation, interviews, takes statements, prepares a full and comprehensive report of each investigation. This is done in preparation for the validation and award process.

Adjudicators:

Will hear and assess each case based on parameters negotiated through the ADR process.

Appendix F

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

REGARDING

COMPENSATION FOR

SURVIVORS OF INSTITUTIONAL ABUSE

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ADDITIONAL 12

SCHEDULE "A": File Reviewers

SCHEDULE "B": Compensation Categories and Counselling Allotments

SCHEDULE "C": Guidelines

SCHEDULE "D": Release

MEMORANDUM OF UNDERSTANDING
REGARDING
COMPENSATION FOR SURVIVORS OF INSTITUTIONAL ABUSE

PREAMBLE

WHEREAS the Province of Nova Scotia operated the Nova Scotia School for Boys (Shelburne Youth Centre) from 1947 to date, and the Nova Scotia School for Girls (Nova Scotia Residential Centre) from 1967 to date; and the Nova Scotia Youth Training Centre from 1927 to date;

AND WHEREAS individual Survivors have come forward at various times disclosing the Sexual and Physical Abuse that was perpetrated against them and other residents at the Institutions;

AND WHEREAS the efforts of individual Survivors to bring their abusers to justice have led to internal disciplinary and police investigations concerning abuse at the Institutions, which investigations are continuing;

AND WHEREAS the Minister became aware of allegations of Sexual and other Physical Abuse at the Institutions;

AND WHEREAS the Minister recommended a process whereby an independent investigation into the events that took place would be ordered to determine what had happened, who was involved, who knew what was happening and what actions were taken in response by those in authority; and further, that if such investigation revealed that Abuse had occurred, an alternate dispute resolution mechanism was to be put in place to determine appropriate compensation for the Survivors of the Abuse;

AND WHEREAS pursuant to the recommendation of the Minister and the direction of the Executive Council of the Province, the Honourable Stuart G. Stratton, Q.C., was appointed to carry out an investigation, the terms of his reference for engagement being to:

(a) investigate the incidents of Sexual and other Physical Abuse of residents that occurred or are alleged to have occurred at the Institutions;

(b) investigate and determine the practices and procedures in place at the Institutions that either permitted or hindered the detection of Abuse of residents;

(c) investigate and determine whether any employees in the Institutions or any public officials were aware of abusive behaviour of staff toward residents; and

(d) investigate and determine what steps, if any, were taken by employees or officials in reference to any such Abuse.

AND WHEREAS after conducting the investigation, the Honourable Stuart G. Stratton, Q.C., determined, *inter alia,* that Sexual and Physical Abuse had taken place at the Institutions and that staff of the Institutions and officials in the Department of Community Services were aware the Abuse was taking place but, at least until the mid-1970s, no positive steps were taken to end the Abuse;

AND WHEREAS the Province agreed to employ an alternate dispute resolution mechanism to determine compensation for Survivors of Physical and Sexual Abuse and entered into discussions with the legal representatives of Survivors;

AND WHEREAS the Province has agreed to compensate Survivors of Physical and Sexual Abuse through a compensation process that is principled, respectful, timely and consistent with the following principles:

THAT the Province recognizes that the Survivors were all minors in the care and custody of the Province during the periods of time they were committed to the Institutions;

THAT Abuse of children can never be condoned and can only be condemned;

THAT the physical and sexual abuse of children by adults in positions of power and trust is a fundamental betrayal that operates to deny a child's dignity and autonomy;

THAT the fundamental purposes of this compensation process are:

- to acknowledge moral responsibility for the Physical and Sexual Abuse experienced by the Survivors which was perpetrated, condoned, or directed by employees of the Province during the time the Survivors were resident in the Institutions;

- to affirm the essential worth and dignity of all of the Survivors, who were residents of the Institutions;

- to assist the Survivors, in a tangible way, with the healing process;

- to affirm to the Survivors that they were not responsible in any way for the Physical and Sexual Abuse perpetrated, condoned, or directed by employees of the Province while the Survivors were resident in the Institutions; and

- to implement financial compensation and other benefits to Survivors in a principled, respectful and timely fashion.

DEFINITIONS

1. In this Memorandum of Understanding:

   (a) "Demand" means a letter from a Survivor to the Province which states the amount of compensation sought by the Survivor in accordance with Schedules "B" and "C" and which is accompanied by a Statement;

   (b) "Department" means the Department of Justice of the Province of Nova Scotia, unless another Department is specifically named;

   (c) "Institutions" means the Nova Scotia School for Boys, the Nova Scotia School for Girls and the Nova Scotia Youth Training Centre;

   (d) "Minister" means the Minister of Justice of the Province of Nova Scotia;

   (e) "Physical Abuse" means any act of physical assault which was a violation of the provisions of the *Criminal Code,* as that legislation existed at the time the act took place;

   (f) "Province" means the Province of Nova Scotia;

   (g) "Racist Acts" means, in the list of aggravating factors contained in Schedule "C", acts of discrimination based on race which occurred in connection with Physical or Sexual Abuse for which compensation is awarded;

   (h) "Response" means the Province's written response to a Survivor's Demand indicating the Province's acceptance, rejection, or compromise offer and which, in the event of a rejection or compromise offer, shall include written reasons and all information or materials in the possession or control of the Province upon which the Province relied in making its rejection or compromise offer;

   (i) "Sexual Abuse" means:

      (i) acts of oral, vaginal or anal intercourse; masturbation; fondling; digital penetration; and acts of sexual interference, which may include inappropriate watching or staring, comments and sexual intimidation; and includes any sexual act which was a violation of the *Criminal Code*, as that legislation existed at the time the act took place; and/or

      (ii) attempted acts of oral, vaginal or anal intercourse, masturbation, fondling, or digital penetration, which were a violation of the *Criminal Code*, as that legislation existed at the time the act took place;

(j) "Statement" means a written statement detailing the Physical and/or Sexual Abuse experienced by a Survivor, taken by Facts-Probe Inc., the Department's Internal Investigation Unit, or a police agency, and signed by the Survivor;

(k) "Survivor" means an individual who alleges that he or she was a victim of Physical and/or Sexual Abuse at one or more of the Institutions from the years referred to in the Preamble until the present; and

(l) "Verbal abuse" includes any comments which would be a violation of the Nova Scotia *Human Rights Act*.

PROCESS

General

2. Survivors, through their legal representatives, have resolved a process and parameters for compensation for the Physical and Sexual Abuse they experienced while resident in the Institutions. It is expressly acknowledged among the parties that neither the terms of this Memorandum nor the process which led to its creation constitute an admission of liability, vicarious or otherwise, on the part of the Province. For further certainty, the parties agree that this Memorandum shall not be introduced as evidence in any existing or future legal proceedings.

3. Survivors whose claims are determined to be valid either through negotiation or file review shall be compensated for Sexual Abuse and Physical Abuse perpetrated, condoned, or directed by employees of the Province during the time the Survivors were resident in the Institutions.

4. Survivors shall only be eligible for the compensation and other benefits identified in this document where it is established, through negotiation or file review, that Physical and/or Sexual Abuse occurred.

5. Compensation determined under this Memorandum of Understanding, whether through negotiation or file review, shall be determined by reference to Statements and, at the option of either the Survivor or the Province, medical records of any of the Institutions. Reference may be made to medical reports prepared for the purpose of establishing Physical Abuse, physical injury or physical disability where no other independent records exist. No monetary compensation shall be made for any psychological consequences of Abuse.

6. Statements given by a Survivor and reduced to writing or recorded on videotape or audiotape with a view to validating the Survivor's claim for compensation shall be used only for purposes of this process and shall not be released to the public without the prior written consent of the Survivor.

7. Survivors shall have access to:

(a) any written statement taken by Facts-Probe Inc. or the Department's Internal Investigation Unit from the Survivor himself or herself or which the giver of the statement has consented in writing to release; and

(b) any medical, educational, social work or probation files kept or maintained by the Institutions in respect of the Survivor personally and not related to others.

8. Any dispute with respect to the truth of the allegations of Abuse or quantum of compensation shall be resolved either through negotiation between the parties (during which corroborative evidence may be introduced) or, if such dispute cannot be so resolved, through the file review process established in this Memorandum of Understanding.

MAKING A CLAIM

9. A Survivor who chooses to participate in the process outlined in this Memorandum shall make a Demand upon the Province.

10. The Province shall provide its Response to the Demand within 45 days after receipt. If the Demand is accepted by the Province, then payment in full shall be made within 20 days of the acceptance, and in any event not later than 65 days from the date of the Demand, upon receipt by the Province of a Release in the form attached as Schedule "D", signed by the Survivor.

11. If the parties have not concluded an agreement through negotiation within 45 days of the Demand, or such further time as the Survivor may agree, the Survivor may continue negotiation with the Province or give notice to the Province that the Demand will be submitted to file review in accordance with this Memorandum. Only written materials referred to in this Memorandum of Understanding, and which have been exchanged by the Survivor and the Province during negotiations, shall be included in the file as either Demand or Response materials for file review.

FILE REVIEW

12. The parties acknowledge that the Survivors have chosen the list of file reviewers attached as Schedule "A", and the Province has accepted the list.

13. The Survivors (as a group) and the Province shall each select interview statements taken by Facts-Probe Inc. which, in their opinion, are representative of the categories contained in Schedule "B" (to a maximum of four statements per category for each of the Province and the Survivors). Upon a file reviewer agreeing to conduct a particular file review, that person shall be provided with the volumes of statements. All names and dates in such statements shall be blanked out for the purposes of their inclusion in the volumes. No interview statement shall be included in any volume without the prior consent of the person who gave the statement. The file

reviewers shall review all of the statements so submitted prior to conducting any file reviews under this Memorandum.

14. If a Survivor chooses to submit a Demand to file review, the Survivor shall give written notice of file review to the Province, indicating the Survivor's choice of file reviewer from the list attached as Schedule "A". Concurrent with the notice of file review, the Survivor shall execute a Release in the form attached as Schedule "D" and deliver it to the Province. The Province shall only reject the Survivor's choice of file reviewer in the case of a conflict of interest, and shall provide written confirmation of acceptance or rejection of the file reviewer within 10 days of receipt of the notice. If necessary, the Survivor shall then have 10 days to choose another file reviewer. This process may continue until a file reviewer has been appointed, at which time the Survivor shall forward the Demand to the file reviewer and shall at the same time provide a copy of the Demand to the Province.

15. File review shall take place within 30 days of the Survivor submitting the Demand to the file reviewer. If the file reviewer chosen by the Survivor is not available within the time limits prescribed herein, then the Survivor and the Province may agree to waive the time limits for purposes of having the matter reviewed by that particular person or, if both parties are not agreeable to waiving the time limits, the Survivor shall choose a person from the list who can conduct a review within the time limits described. The file reviewer ultimately chosen shall not have the power to adjourn or recess a proceeding beyond the time limits prescribed without the consent of both parties.

16. The Province shall have 20 days from the date the Survivor submits the Demand to the file reviewer to forward its Response to the file reviewer.

17. Concurrently with the Survivor's forwarding of the Demand to the file reviewer, the Survivor shall be entitled to request an appearance before the file reviewer to support his or her Demand. The Province shall be notified in writing by the Survivor at the time such request is made. The Survivor shall be entitled to appear before the file reviewer either personally or by way of videotape, audiotape or telephone. The Survivor may appear without counsel, in which case the Survivor will be the sole party to appear before the file reviewer. The Survivor may appear with counsel to make representations, in which case the Province may also appear and make representations.

18. Should the Survivor make allegations which are not already contained in the Statement when appearing before the file reviewer, the file reviewer shall explain the following options to the Survivor and ask the Survivor to choose one of them:

(a) Immediately adjourn the file review, upon which the Survivor shall be required to give a further Statement and make a further Demand upon the Province as outlined in paragraph 9; or

(b) Disregard the new allegations when deciding the Survivor's quantum of compensation.

19. The Province undertakes to treat all Survivor information it holds or receives in respect of a Survivor's claim for compensation pursuant to this Memorandum of Understanding in accordance with its obligations under the *Freedom of Information and Protection of Privacy Act*.

20. Should the Survivor choose to give a further Statement and submit a further Demand to the Province as outlined in paragraph 18(a), the Survivor shall be responsible for his or her legal costs incurred from the date of the adjournment.

21. The file reviewer shall render a written decision to the Survivor and the Province within 30 days of the later of the Province's submission or the appearance before the file reviewer. The file reviewer shall be provided with this Memorandum of Understanding and shall issue a decision that accords with Schedule "C", having regard to the Statement Volumes provided by counsel for the Province and counsel for the Survivors, and which does not exceed the monetary limits set forth in Schedule "B".

22. Should the file reviewer fail to render a written decision within the time limit outlined in paragraph 21, $100 shall be deducted from the file reviewer's fee for every day the decision is late.

23. The decision of the file reviewer is final and not subject to appeal or other form of judicial review. The file review is not a submission to arbitration under any legislation, nor is it a submission under any other legislative enactment dealing with alternative dispute resolution mechanisms and providing for some right of appeal.

COMPENSATION

24. Where compensation becomes payable as a result of negotiation or a file reviewer's decision, the Province shall pay such amount to the Survivor within 20 days of the amount being decided.

25. All compensation awards shall be paid to the lawyer representing the Survivor, in trust, and shall only be paid upon the Province's receipt of a written direction to pay signed by the Survivor.

SOCIAL ASSISTANCE WAIVER

26. A social assistance waiver will be provided to Survivors who receive compensation pursuant to this Memorandum of Understanding, the effect of which will be to deem the amount of compensation received by the Survivor not to be income for purposes of the laws of the Province of Nova Scotia. However, any income which a Survivor earns in a year, whether it be income generated from the compensation amount or otherwise, shall be treated as income and may disqualify the individual from social assistance in accordance with the applicable standards or regulations under the applicable legislation.

27. The Province undertakes to request the other provinces and territories of Canada to enact reciprocating policies or legislation to provide similar waivers.

COUNSELLING

Interim

28. Survivors acknowledge that the Province has made interim psychological counselling available to them since July 20, 1995, to a maximum of the earlier of one year's counselling or $5,000 in expenditure for counselling.

29. A Survivor shall be entitled to continue interim counselling until:

(a) compensation becomes payable to the Survivor pursuant to this Memorandum of Understanding;

(b) a file reviewer determines that no compensation is payable to the Survivor; or

(c) the Survivor chooses to actively pursue legal action against the Province in respect of the alleged Abuse.

Long-term

30. Upon an amount becoming due to a Survivor as compensation pursuant to this Memorandum of Understanding, all interim counselling shall be terminated and the Survivor shall become entitled to receive counselling in accordance with Schedule "B".

31. The counselling allotment so awarded may be applied to the cost of employment counselling, psychological counselling, and/or financial counselling, at the option of the Survivor.

32. A Survivor may transfer any portion of the value of his or her psychological counselling to his or her spousal partner or children, and the cost of such counselling shall be deducted from the Survivor's counselling allotment.

33. The Province shall be entitled to require that all counsellors be accredited in accordance with the Province's initial agreement to provide interim counselling in order to qualify for service provision to Survivors pursuant to this Memorandum.

OTHER BENEFITS

35. The Province shall provide Survivors and/or their counsel with a list of programs available in Nova Scotia through the Drug Dependency Services division of the Department of Health.

36. The Province shall facilitate and fund the preparation by an independent recorder of a public report of Survivors' testimonials.

LEGAL FEES

37. Legal fees incurred by Survivors shall be paid by the Province in accordance with the following Sections.

38. Legal fees shall be paid in accordance with the following tariffs:

(a) Senior counsel (10+ years' practice): their usual hourly rate to a maximum of $175 per hour.

(b) Intermediate counsel (5 to 9 years' practice, inclusive): their usual hourly rate to a maximum of $150 per hour.

(c) Junior counsel (less than 5 years' practice): their usual hourly rate to a maximum of $125 per hour.

(d) Articled clerks: their usual hourly rate to a maximum of $75 per hour.

39. Time spent by counsel's office staff shall be considered to be included in the above hourly rates.

40. Disbursements shall be charged at the actual rate incurred, and may include the usual disbursements paid in relation to the preparation and advancement of a Survivor's claim (i.e., photocopying, postage, long-distance telephone calls).

41. Counsel's travel shall be paid, where the distance travelled exceeds 50 kilometers, in accordance with the following tariffs:

(a) Where travelling is done between the hours of 8:00 a.m. and 7:00 p.m., counsel's time shall be charged in accordance with the hourly rates established in paragraph 38.

(b) Where travelling is done outside the hours of 8:00 a.m. and 7:00 p.m., counsel's time shall be charged at one-half the hourly rates established in paragraph 38.

(c) Airfare shall be paid at the actual amount incurred (receipts required).

(d) Mileage, where travel was by car, shall be paid at $0.29 per kilometer.

(e) Hotel room rates, exclusive of room service, shall be paid at the actual amount incurred (receipts required).

(f) Actual cost of two meals per day shall be paid, to a maximum of $40.

Memorandum of Understanding Meeting Fees

42. Counsel may submit an account for legal fees, travel and disbursements incurred, from July 20, 1995 to the signing date of this Memorandum, in the course of discussions with the Province to develop this Memorandum of Understanding, exclusive of time, travel and disbursements incurred in connection with services provided to a particular client's civil claim.

43. Accounts for legal services rendered in accordance with paragraph 42 may only be submitted on or after the signing date of this Memorandum of Understanding.

44. The Province shall, within 60 days after receipt of an account for legal services rendered in accordance with paragraph 42, respond in writing to the lawyer who submitted the account, indicating the Province's acceptance or rejection of the account as rendered. If the Province fails to respond within 60 days of receiving the account, then the amount set forth in the account shall be deemed to be rejected by the Province.

45. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel; or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 59-63.

46. Once the final amount of the account has been determined through acceptance, negotiation or taxation, the amount so determined shall become payable within 30 days after the determination of the amount of compensation payable to that counsel's first client to receive compensation.

47. Counsel shall not be entitled to submit accounts in respect of any Memorandum of Understanding meetings which they did not personally attend.

Litigation Fees

48. Counsel may submit an account for legal fees, disbursements and travel incurred in furtherance of a particular Survivor's civil case, from the date counsel was retained by the particular Survivor to the signing date of this Memorandum of Understanding, which account shall be exclusive of time spent: in preparation for, correspondence regarding, or attendance at media interviews; and in respect of lobbying the Province for a public inquiry.

49. Accounts rendered in accordance with paragraph 48 shall be submitted on or after the date of signing of this Memorandum of Understanding.

50. The Province shall, within 90 days after receipt of an account for legal services rendered in accordance with paragraph 48, respond in writing to the lawyer who submitted the account, indicating the Province's acceptance or rejection of the account as rendered. If the Province fails to respond within 90 days of receiving the account, then the amount set forth in the account shall be deemed to be rejected by the Province.

51. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel; or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 59-63.

52. Once the amount of the account has been determined through acceptance, negotiation or taxation, the amount so determined shall be paid within 30 days of the date of determination of the compensation payable to that particular Survivor. For further certainty, if there is a final determination that no compensation is payable to the Survivor, then no litigation fees shall be payable in respect of that Survivor.

Process Fees

53. Counsel may, on receipt of compensation funds for a particular Survivor, submit an account for legal fees, disbursements and travel incurred on behalf of that Survivor after the date of signing of this Memorandum of Understanding.

54. Such account shall not exceed 10 hours' representation.

55. The Province shall, within 30 days after receipt of an account for legal services rendered in accordance with paragraph 53, respond in writing to the lawyer who submitted the account, indicating the Province's acceptance or rejection of the account as rendered. If the Province fails to respond within 30 days of receiving the account, then the amount set forth in the account shall be deemed to be rejected by the Province.

56. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel; or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 59-63.

57. Once the final amount of the account has been determined through acceptance, negotiation or taxation, the amount so determined shall become payable within 20 days.

Contingency Fees

58. The parties agree that once a Survivor has signed a Release in the form attached as Schedule "D" all contingency fee agreements previously entered into between counsel and the Survivor shall be revoked, and no further contingency fee arrangements shall be entered into between counsel and the Survivor in respect of compensation payable under this Memorandum of Understanding.

Taxation

59. (1) Notwithstanding any provincial legislation respecting taxation of legal accounts for services, the parties agree that Robert W. Wright, Q.C., shall act as a taxing master in respect of any accounts for services rendered in accordance with this Memorandum of Understanding.

(2) Upon receipt of a written request for taxation, Robert W. Wright, Q.C. shall, within 30 days of receipt of the request, set the matter down for a hearing on a date which is acceptable to both parties, but in any event the hearing shall be held within 90 days of receipt of the request.

60. Notwithstanding paragraph 59, counsel and the Province may agree in writing to submit an account to the provincial Taxing Master appointed in accordance with provincial legislation, where Robert W. Wright, Q.C., is in a conflict of interest position in respect of that counsel or a particular Survivor.

61. The decision of Robert W. Wright, Q.C., or the provincial Taxing Master in respect of a particular account shall be final and shall not be subject to appeal.

62. Taxation of a particular account may be conducted by telephone conference or in person, and counsel whose account is being taxed and the Province shall be entitled to participate in the taxation.

63. The Province shall be responsible for payment of the fees of either Robert W. Wright, Q.C., or the provincial Taxing Master.

ADDITIONAL

64. The effective date of this Memorandum of Understanding shall be June 17, 1996.

65. After the effective date of this agreement, if a Survivor who has given a Statement and is eligible for compensation pursuant to this agreement dies, then the lawful heirs/estate of the Survivor shall be entitled to make a claim for compensation under this Memorandum of Understanding.

66. The Minister, on behalf of the Province, shall, within 30 days of the effective date of this agreement, convey a public apology to the Survivors and families of Survivors for the Physical and Sexual Abuse the Survivors experienced while resident in the Institutions.

67. Following the conclusion of settlement of any individual claim hereunder, the Minister shall, by personal letter addressed to the Survivor, convey an apology to the Survivor.

68. A Survivor who is entitled to compensation hereunder may, at the Survivor's option, have all or part of the compensation paid by way of structured settlement on such terms and conditions as may be agreed upon.

69. To be eligible for compensation hereunder, a Survivor must, within six months of the effective date of this Memorandum, give written notice of the Survivor's intention to make a Demand upon the Province, and must submit a Demand within six months of giving such notice.

70. The parties, by their signatures below, agree that this Memorandum of Understanding constitutes all of the terms discussed among them, and further agree that there are no other

written or verbal terms which have been negotiated outside of this Memorandum of Understanding.

71. The parties agree that this Memorandum of Understanding may be executed in counterparts, by facsimile signature or otherwise, and that such counterparts shall form part of the Memorandum, and shall be as effective as if the original Memorandum had been signed by each party.

CONSENTED TO AS TO FORM as of the 15th day of May, 1996.

THE PROVINCE OF NOVA SCOTIA

Per:__________________________

Per:__________________________

Per:__________________________

COUNSEL FOR SURVIVOR

Per:__________________________

SCHEDULE "A"

FILE REVIEWERS

(List to be Provided by June 17, 1996)

SCHEDULE "B"

COMPENSATION CATEGORIES and COUNSELLING ALLOTMENTS

	Description	Range of Awards ($)	Counselling Allotments
Category 1	Severe Sexual and Severe Physical	$100,000 - $120,000	$10,000
Category 2	Severe Sexual and Medium Physical Severe Physical and Medium Sexual	$80,000 - $100,000	
Category 3	Severe Sexual and Minor Physical Severe Physical and Minor Sexual	$60,000 - $80,000	
Category 4	Severe Sexual	$50,000 - $60,000	
Category 5	Severe Physical	$25,000 - $60,000	
Category 6	Medium Physical and Medium Sexual	$50,000 - $60,000	$7,500
Category 7	Minor Sexual and Medium Physical Minor Physical and Medium Sexual	$40,000 - $50,000	
Category 8	Medium Sexual	$30,000 - $50,000	
Category 9	Minor Sexual and Minor Physical	$20,000 - $30,000	$5,000
Category 10	Medium Physical	$5,000 - $25,000	
Category 11	Minor Sexual	$5,000 - $30,000	
Category 12	Minor Physical and/or Sexual Interference	$0 - $5,000	

SCHEDULE "C"

GUIDELINES

The following guidelines are not intended to be exhaustive, but examples of the type and frequency of abuse that would merit inclusion in a particular category. The number of incidents may not be determinative of category, but may offer guidance to determine category. Cases shall be evaluated in the context of Statements available for review. After determining which category a Survivor shall be placed in, a file reviewer shall consider any aggravating factors present and may, on the basis of the aggravating factors, move the Survivor up within the range of that category. The absence of aggravating factors in any particular situation shall not preclude a Survivor from being placed at the top of a category range.

For purposes of clarity, any act which constituted sexual assault or attempted sexual assault under the *Criminal Code*, as it existed at the time of the act, as well as sexual interference as outlined herein, shall be considered to be Sexual Abuse.

SEVERE SEXUAL:

Type of Abuse:
- anal intercourse
- vaginal intercourse
- oral intercourse

Duration/Number of Incidents:
- repeated, persistent, characterized as "chronic", "severe"

Aggravating Factors:
- verbal abuse
- withholding treatment
- long-term solitary confinement
- Racist Acts
- threats
- intimidation

SEVERE PHYSICAL:

Type of Abuse:
- physical assault, with broken bones (i.e., nose, arm, etc.), or other serious physical trauma, with or without hands (i.e., objects), with evidence of hospitalization/treatment or permanent partial disability

Duration/Number of Incidents:
- repeated, persistent, characterized as "chronic," "severe"

SEVERE PHYSICAL, cont'd:

Aggravating Factors:
- verbal abuse
- withholding treatment
- long-term solitary confinement
- Racist Acts
- threats
- intimidation

MEDIUM SEXUAL:

Type of Abuse:
- anal intercourse
- vaginal intercourse

Duration/Number of Incidents:
- one or more incidents
- shorter duration

Type of Abuse:
- oral intercourse
- masturbation/ fondling
- digital penetration

Duration/Number of Incidents:
- numerous incidents
- repeated, persistent

Aggravating Factors:
- verbal abuse
- withholding treatment
- solitary confinement
- Racist Acts
- threats
- intimidation

MEDIUM PHYSICAL:

Type of Abuse:
- physical assault, with broken bone or bones (i.e., nose, arm, etc.), or other serious physical trauma, with or without hands (i.e., objects), with evidence of hospitalization/ treatment if available
- chronic beatings, over significant period of time

Duration/Number of Incidents:
- one or more incidents

MEDIUM PHYSICAL, cont'd:

Aggravating Factors:
- verbal abuse
- withholding treatment
- solitary confinement
- Racist Acts
- threats
- intimidation

MINOR SEXUAL:

Type of Abuse:
- fondling
- masturbation
- oral intercourse
- digital penetration

Duration/Number of Incidents:
- fewer incidents
- short duration

Aggravating Factors:
- verbal abuse
- threats
- intimidation
- withholding treatment
- Racist Acts
- solitary confinement

MINOR PHYSICAL:

Type of Abuse:
- physical assault, with or without hands (i.e., objects) (a.k.a. common assaults)

Duration/Number of Incidents:
- isolated incidents
- short duration

Aggravating Factors:
- verbal abuse
- threats
- intimidation
- Racist Acts
- solitary confinement

SEXUAL INTERFERENCE: Type of Abuse (must be of a sexual nature):

- watching
- comments
- intimidation

Duration/Number of Incidents:

- repeated/persistent
- numerous incidents

Aggravating Factors:

- verbal abuse
- threats
- intimidation
- Racist Acts

SCHEDULE "D"

RELEASE

I,____________________________________, called the "releasor," on behalf of my heirs,
(PRINT NAME)
executors, administrators, successors and assigns, do hereby acknowledge that:

1. I am a Survivor of physical and/or sexual abuse experienced while I was a minor in the care and custody of the Province at one or more of the Institutions, as defined in the Memorandum of Understanding dated as of the 15th day of May, 1996.

2. I have received, read and understand the Memorandum of Understanding. I understand that the Memorandum of Understanding represents the full range of benefits to which I might be entitled and sets out the criteria or conditions that I must meet to access those benefits. There are no written or verbal representations outside of that Memorandum of Understanding that I am relying on.

3. I understand that the purpose of the process under the Memorandum of Understanding is to certify my claim and to determine the range of benefits to which I am entitled and which will provide the most benefit to me under the Memorandum of Understanding, having regard to the objects of the Memorandum of Understanding.

4. I further agree and understand that provision of any benefit to me under the Memorandum of Understanding is made without any admission that her Majesty the Queen in Right of the Province of Nova Scotia or her servants and/or agents were negligent or in breach of any duty towards me or that they were in any way responsible for my injuries or damages and that any liability is denied.

IN CONSIDERATION of the provision to me of the benefits under the Memorandum of Understanding and in accordance with its terms and by which I now agree to be bound, and subject to my rights arising under the Memorandum of Understanding:

5. I hereby release and forever discharge Her Majesty the Queen in Right of Nova Scotia and her present and former servants, agents, employees or officials who were in any way involved in the administration of the Institutions, whether involved in direct supervision or management, from all manners of action, causes of action, claims or demands which as against any of the above I had, now have or may hereafter have for any cause, matter or thing whatsoever arising out of my attendance at any of the Institutions, and without limiting the generality of the foregoing, by reason of any injuries and damages which I experienced as a result of abuse or mistreatment otherwise actionable at law while I was a minor in the care and custody of the Province at any or all of the Institutions;

6. For greater certainty, nothing in this Release is intended to release the Releasor's right to commence and maintain an action against any employee of Her Majesty the Queen in Right of Nova Scotia who committed an act of physical or sexual assault against the Releasor while the Releasor was a resident in one of the Institutions;

7. I hereby agree that I will not commence or maintain against Her Majesty the Queen in Right of the Province of Nova Scotia any action under any Federal or Provincial laws for negligence, contributory negligence, breach of contract, breach of trust or fiduciary responsibility or any action of any kind whatsoever with respect to any damage experienced as a result of my attendance at one or more of the Institutions;

8. I agree that the process under the Memorandum of Understanding is in substitution for any recourse that I may have at law or in equity to commence any proceedings against Her Majesty the Queen in Right of the Province of Nova Scotia in some other forum and I agree to be bound by the results of the process under the Memorandum of Understanding;

9. I hereby covenant and agree not to disclose the amount of any compensation which I may receive pursuant to the Memorandum of Understanding except to my care givers, financial and other professional advisors, family, other survivors, legal counsel or file reviewers; and

10. I hereby acknowledge having obtained or having been given the opportunity to obtain independent legal advice and declare that I understand the nature and effect of this release and have considered the alternative forms of action available to me. I am signing this release freely and of my own accord without any undue influence from anyone.

IN WITNESS WHEREOF I have signed this release this day of , 199

SIGNED, SEALED AND DELIVERED)
in the presence of)
)
)
)
)

_______________________ _______________________
(Witness) (Signature of Releasor)

Appendix G

Compensation for Institutional Abuse Program Guidelines

Compensation for Institutional Abuse Program: Guidelines

Nova Scotia
Department of Justice

Halifax

November 1997

Compensation for Institutional Abuse Program
Nova Scotia Department of Justice
P.O. Box 2724
Halifax, Nova Scotia
B3J 3P7

Tel: 902-424-8141
Fax: 902-424-0782

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GUIDELINES

GENERAL

1.1 The Compensation for Institutional Abuse Program (the "Program") is a Program of the Province of Nova Scotia. These are the *Guidelines of the Compensation for Institutional Abuse Program of the Province of Nova Scotia* ("Guidelines"). The Guidelines provide for the administration of the Compensation Program and the evaluation of claims and may be revised by the Province of Nova Scotia as the need arises. The effective date of these Guidelines is November 6, 1997, and all decisions respecting the Program taken on or after that date shall be governed by these Guidelines.

1.2 In these Guidelines

"Award" means a sum of money offered by the Province and accepted by the Claimant, or a sum of money awarded by a File Reviewer to a Claimant;

"Claimant" means a person who alleges that he or she was a victim of Physical and/or Sexual Abuse while a resident of one or more of the Institutions;

"Demand" means a two-part document comprising (i) a letter setting out the amount and category of compensation the Claimant is requesting in accordance with Schedules "A" and "B", with reasons; and (ii) a Statement;

"Department" means the Department of Justice of the Province of Nova Scotia, unless another Department is specifically named;

"Employee" means a person engaged as an employee by the Province of Nova Scotia in an employee-employer relationship at an Institution at the time the abuse is alleged to have occurred;

"Institutions" means the Nova Scotia School for Boys (Shelburne Youth Centre) for the period September 1, 1947, to date, the Nova Scotia School for Girls (Nova Scotia Residential Centre) for the period April 1, 1967, to date, and the Nova Scotia Youth Training Centre for the period 1927 to date;

"IIU" means the Internal Investigations Unit of the Department of Justice;

"Minister" means the Minister of Justice of the Province of Nova Scotia;

"MSI" means Medical Services Insurance (Nova Scotia);

"New Allegation" means an allegation which is different from an allegation already contained in a Statement, and includes the naming of an Employee not previously identified as an alleged abuser, a change in the circumstances or time associated with an assault, an increase in the frequency or severity of a particular assault, or any other allegation not contained in a Claimant's Statement;

"Physical Abuse" means any act of physical assault which was a violation of the provisions of the *Criminal Code of Canada* as that legislation existed at the time the act took place, but does not include an act that would be included under Section 43 of the *Criminal Code* (or the corresponding provision at the time the act took place), or the reasonable use of a strap by way of correction where the use of the strap was a common disciplinary practice in the public schools of Nova Scotia at the time the incident described took place;

"Province" means the Province of Nova Scotia;

"Racist Acts" means, in the list of aggravating factors contained in Schedule "B", acts of discrimination based on race related to the Physical or Sexual Abuse for which compensation is awarded;

"Response" means the Province's written response to a Claimant's Demand indicating the Province's acceptance, rejection, or offer which is less than what the Claimant demanded, and which, in the event of a rejection or lesser offer, shall include written reasons and all information or materials in the possession or control of the Province upon which the Province relied in making its rejection or lesser offer;

"Sexual Abuse" means:

(i) acts of oral, vaginal, sexual, or anal intercourse; masturbation; fondling; digital penetration; and includes any sexual act which was a violation of the *Criminal Code*, as that legislation existed at the time the act took place;

(ii) attempted acts of oral, vaginal, sexual, or anal intercourse; masturbation, fondling, or digital penetration, which were a violation of the *Criminal Code*, as that legislation existed at the time the act took place; or

(iii) acts of sexual interference;

"Sexual Interference" means touching, watching, comments, or intimidation, where such acts are for a sexual purpose;

"Statement" means an account by a Claimant detailing the Physical and/or Sexual Abuse alleged by the Claimant as having occurred at one or more of the Institutions, taken by Facts Probe Inc., a policy agency, or the IIU;

"Verbal Abuse" includes any comments which would be a violation of the Nova Scotia *Human Rights Act*.

BACKGROUND

2.1 In December 1994, former Chief Justice Stuart G. Stratton (New Brunswick) was appointed by the Minister of Justice to lead an independent investigation into incidents and allegations of Sexual and Physical Abuse at the former Nova Scotia School for Boys at Shelburne, the former Nova Scotia School for Girls at Truro, the Nova Scotia Youth Training Centre at Bible Hill, and the Children's Training Centres at Sydney and Dartmouth. In the *Report of an Independent Investigation in Respect of Incidents and Allegations of Sexual and other Physical Abuse at Five Nova Scotia Residential Institutions* ("Stratton Report") released on June 30, 1995, Mr. Stratton concluded that abuse had occurred in three of the five institutions.

2.2 The Compensation for Institutional Abuse Program (the "Program") was established in 1996 to compensate persons who were physically and/or sexually abused by Employees while they were residents of the Nova Scotia School for Boys (Shelburne Youth Centre) from September 1, 1947, to date, the Nova Scotia School for Girls (Nova Scotia Residential

Centre) from April 1, 1967, to date, or the Nova Scotia Youth Training Centre from 1927 to date.

THE PROGRAM

3.1. The Department is responsible for the administration of the Program.

3.2 The procedure set out under these Guidelines may be summarized as follows :

1) the Claimant gives a Statement and submits a Demand to the Province;

2) the claim is investigated and the Province provides the Claimant with a Response; and

3) the Claimant accepts the Province's offer, negotiates a settlement, or, appeals to a File Reviewer for a final determination.

3.3 Where a claim is validated, compensation is provided under this Program in the amounts set out in Schedule "A". A description of the categories of Sexual and Physical Abuse for which compensation is provided under this Program is set out in Schedule "B".

3.4 The Program does not provide compensation for (i) abuse perpetrated by residents upon residents; (ii) abuse perpetrated by individuals who were not Employees; (iii) negligence, or (iv) the psychological consequences of Physical or Sexual Abuse.

3.5 In addition to financial compensation, the Program provides counselling services, the payment of legal fees, and a letter of apology from the Minister.

3.6 The payment of compensation and the provision of any benefit to a Claimant under this program is *ex gratia* and does not constitute an admission of liability, vicarious or otherwise on the part of the Province.

ELIGIBILITY

4.1 As of the effective date of these Guidelines, to be eligible for this Program, a Claimant must have submitted to the Province

a) a Demand by December 18, 1996; or, a Notice of Intention to File a Demand by December 18, 1996, and a Demand by July 31, 1998; and

b) executed medical releases by April 1, 1998.

4.2 In addition, where a Claimant has not yet given a Statement, the Claimant must contact the IIU by February 27, 1998, to schedule a Statement taking interview. Schedule "C" provides information about contacting the IIU and scheduling the interview.

4.3 At any stage in the Program, a Claimant may be requested to give a further Statement or Statements to the IIU where necessary to complete an investigation. A refusal to give this further Statement to the IIU will result in the investigation being temporarily suspended.

4.4 The Province shall access a Claimant's medical and MSI (or other provincial health program) records only where such records are needed to evaluate the Claimant's Demand.

4.5 A Claimant will be considered to have withdrawn from the Program and will no longer be eligible for compensation

a) where the Claimant has not yet given a Statement and does not contact the IIU by February 27, 1998;

b) where the IIU has requested a further Statement from the Claimant and the Claimant has not provided one within 60 days of the request;

c) where the Claimant has not provided the IIU with executed medical releases by April 1, 1998; or

d) where the Claimant has not provided the Province with a Demand by July 31, 1998.

STATEMENTS

5.1 In giving a Statement, the Claimant is expected to be truthful respecting the matters the Claimant describes. Failure to tell the truth may invalidate any claim for compensation the Claimant may have. The Claimant should also be aware that he or she may be committing an offence under provincial law or the *Criminal Code of Canada*.

5.2 As of October 1, 1997, all Statements shall be taken by the IIU only. Statements given to the RCMP or Facts Probe, Inc. prior to October 1, 1997, will continue to be accepted for purposes of filing a Demand.

5.3 Schedule "D" sets out procedures respecting the giving of a Statement to the IIU.

5.4 Where a Claimant makes a New Allegation subsequent to filing a Demand, the New Allegation shall be investigated and a Response provided only after the IIU has completed its investigation into the New Allegation.

5.5 Statements by other Claimants may not be incorporated within a Claimant's Demand or submitted separately for use in the assessment of claims or at File Review unless the IIU has had an opportunity to investigate the allegations in those Statements.

5.6 A Statement may be used by the Province, without notice to the Claimant, for purposes relating to the alleged Physical and/or Sexual Abuse including, but not limited to :

a. discipline proceedings relating to present Employees of the Province;
b. any investigation or prosecution of an offence;
c. a report of child abuse to the Department of Community Services, and any investigation undertaken by the Department or a child protection agency;
d. civil litigation on behalf of or against the Province or a child protection agency; or
e. the identification of potential witnesses for the investigation and validation of claims.

5.7 The Province undertakes to treat all Claimant information it holds or receives in respect of a Claimant's Demand for compensation in accordance with its obligations under the *Freedom of Information and Protection of Privacy Act*.

5.8 The claim of any Claimant who dies after having given a Statement, but before a final determination of his or her claim has been rendered, may be advanced by the lawful heirs or estate of the Claimant.

5.9 A Claimant is advised to seek the assistance of counsel in preparing a Demand, and where a Claimant chooses to be unrepresented, the Claimant shall be required to sign a statement to the effect that before entering the Program he or she was advised by the Province to seek legal advice, and the Claimant chose not to.

THE RESPONSE

6.1 The Response shall be a fair and considered determination of the validity of a Claimant's Demand, and an assessment of the amount of compensation payable to the Claimant in accordance with Schedules "A" and "B".

6.2 As a condition for making an offer of compensation, the Province must be satisfied on a balance of probabilities that the Claimant experienced the Sexual and/or Physical Abuse described in the Claimant's Statement.

6.3 In making a determination of the validity of the allegations in the Claimant's Demand, the Province shall consider in evidence

a) the Claimant's Statement or Statements; the Claimant's institutional records; employment records of Employees or former Employees against whom the Claimant has made an allegation or allegations;

and where available,

b) polygraph test results; the Claimant's medical records; and other relevant information.

6.4 The opinion of a polygrapher certified by the Canadian Police College is admissible in evidence on assessment in respect of the truthfulness of the individual polygraphed by the polygrapher. Where polygraph evidence exists, the Province shall include the polygrapher's opinion(s) with its Response.

6.5 Where in the course of responding to a Demand, the Province is provided with a polygrapher's opinion respecting the truthfulness of some or all of the Employees against whom a Claimant has made allegations, the Province shall notify the Claimant of the existence of the polygraph evidence prior to providing a Response. Within 30 days of this notification, should a Claimant choose to undertake a polygraph, the Province will make arrangements, at its expense, for a polygraph test to be administered to the Claimant, and the results of the test shall be made known to both the Claimant and the Province, and shall become part of the evidence on which the Response is based.

6.6 Where a Claimant makes one or more groundless, implausible, or deceitful allegations, the Province will draw an adverse inference in the consideration of other allegations.

6.7 A Claimant's institutional documents shall be provided with the Response.

6.8 The Claimant may expect to receive a Response from the Province within seven (7) months of submitting his or her Demand. However, where there is a complex claim involving numerous allegations or witnesses, or where an investigation is placed on hold because of delays in obtaining a Claimant's Statement, medical releases, or medical records, a longer Response time may result.

6.9 After the Response has been provided to the Claimant, the parties may seek to negotiate a settlement which could result in a revised offer of compensation from the Province.

6.10 With the exception of those Claimants referenced in Section 15.5, an offer of compensation by the Province is open to acceptance by a Claimant for 12 months from the date of the offer unless it is sooner revoked. In accepting the offer of the Province, the Claimant must provide the Province with an executed Release in the form of Schedule "E" before payment may be made.

FILE REVIEW

Notice and Submissions

7.1 An appeal from the Province's decision as expressed in the Response is available to the Claimant through the File Review process.

7.2 Notice of File Review is effected when the Claimant provides the office of the Program Director

a) a written Notice of File Review; and

b) an executed Release in the form found in Schedule "E"

within six (6) months of receiving a Response. For greater clarity, with the exception of those Claimants referenced in Section 15.4, a Claimant who does not file the Notice of File Review with the Release within six months of receiving a Response may not proceed to File Review.

7.3 All File Reviews shall proceed by way of written submissions.

7.4 Within 30 days of giving notice of File Review, the Claimant shall provide the File Reviewer and the Province with the Claimant's File Review Submission giving reasons why the amount of compensation in the Province's Response should be changed.

7.5 Within 30 days of the receipt of the Claimant's File Review Submission, the Province shall provide the File Reviewer and the Claimant with the Province's File Review Submission giving reasons for the Province's position along with any new evidence.

7.6 The Claimant may, within 15 days of receipt of the Province's File Review Submission, address any issue arising from the Province's File Review Submission in writing.

7.7 Where a Claimant makes a New Allegation in the Claimant's File Review Submission or in any other submission to the File Reviewer, the File Reviewer shall end the File Review process. The Claimant shall be required to give a further Statement and to make a further Demand upon the Province. Following the investigation of the New Allegation, the Province shall provide a further Response.

7.8 Concurrent with their File Review Submissions, the Claimant and the Province shall deliver a copy of their respective Demand and Response to the File Reviewer along with all related documents. Also, each party shall provide the other with a list of the documents provided to the File Reviewer and any document not previously exchanged between the parties shall be exchanged at this time.

7 9 The File Reviewer shall not withhold a reasonable request for an extension of a submission deadline.

File Reviewers

8.1 A File Reviewer shall be a member of the Bar with administrative law, alternative dispute resolution, or other relevant experience.

8.2 A File Reviewer shall be assigned by the office of the Program Director by rota as Notices of File Review are effected.

8.3 The list of File Reviewers is found in Schedule "F " and may be amended as circumstances require.

8.4 File Reviewers shall be compensated in the amounts set out in Schedule "G".

File Reviewer's Decision

9.1 The responsibility of the File Reviewer is to conduct a review of the record. The File Reviewer is independent and impartial and represents neither the Claimant nor the Province.

9.2 The File Reviewer's decision shall be a fair and considered determination of the validity of the Claimant's Demand and an assessment of whether the compensation offered or denied by the Province should be changed. Where the File Reviewer concludes that the Province's offer of compensation or otherwise should be changed, the File Reviewer shall make an Award in keeping with Schedules "A" and "B".

9.3 As a condition for making an Award, the Claimant must satisfy the File Reviewer on the balance of probabilities that the Claimant experienced the Sexual and/or Physical Abuse described in the Claimant's Statement.

9.4 In making a determination of the validity of the allegations in the Claimant's Demand, the File Reviewer shall consider in evidence

a) the Claimant's Statement or Statements; the Claimant's institutional records; records of employment of Employees or former Employees against whom the Claimant has made an allegation or allegations;

and where available,

b) polygraph test results; the Claimant's medical records; and any other relevant information.

9.5 The opinion of a polygrapher certified by the Canadian Police College is admissible in evidence at File Review in respect of the truthfulness of the individual polygraphed by the polygrapher.

9.6 File Review decisions may not to be used as precedents.

9.7 Within 45 days of the receipt of all submissions, the File Reviewer shall provide a written decision with reasons to the Claimant and the Province.

9.8 The decision of the File Reviewer is final and not subject to appeal or other form of judicial review. The File Review is not a submission to arbitration under any legislation, or a submission under any other legislative enactment dealing with an alternative dispute resolution mechanism and providing for some right of appeal.

9.9 An Award made by the File Reviewer shall be paid within 30 days and in accordance with Section 10 of these Guidelines.

PAYMENT OF AWARDS

10.1 Where the amount of an Award is $10,000 or less, the Claimant shall be paid the full amount awarded within 30 days of the determination of the amount to be paid.

10.2 Where the amount of an Award exceeds $10,000, the Claimant shall be paid the greater of $10,000 or twenty (20) per cent of the total amount awarded within 30 days of the determination of the amount to be paid. The balance of the Award shall be paid over four (4) years by instalment with interest.

10.3 Where interest is payable on an Award it shall be at the rate of five (5) per cent per annum compounded annually on the outstanding balance from the date of the first instalment. The frequency of payment, whether monthly or annually, shall be determined by the Claimant. Schedule "H" provides examples of monthly and annual instalment payments over a four year period.

10.4 Before payment of an Award is made, the Province

a) shall require a Claimant to sign a Release in the form attached as Schedule "E"; and

b) may require a Claimant to sign a direction to pay form or a direct deposit form.

10.5 Instalment payments shall be paid to the Claimant's bank, and it is the responsibility of the Claimant to advise the Province in writing of the bank where the payments are to be made. If a Claimant changes his or her bank or bank account, it is the Claimant's responsibility to advise the Province of this change.

10.6 Despite Section 10.5, if any Claimant is not able to open a bank account for a *bona fide* reason, arrangements may be made to pay the money into the trust account of the Claimant's counsel, or to a person holding power of attorney for the Claimant. It is the responsibility of the Claimant to make these arrangements and to cover any associated costs.

10.7 Should a Claimant, for whatever reason, not collect an Award, interest will not be earned on any unpaid balance more than four (4) years from the date of the first payment.

10.8 In case of the Claimant's death or incapacity, payments may be made to the Claimant's estate and may be paid as a lump sum regardless of the amount.

10.9 Where there is a delay in the start-up of instalment payments, a Claimant shall receive a "catch-up" payment.

10.10 Monthly instalment payments shall be paid at the end of each month, and annual payments on the anniversary of the first instalment.

10.11 Where the Claimant owes a sum of money under the terms of a court order under the *Divorce Act* or the *Family Maintenance Enforcement Act*, the Province, upon being notified, shall direct that the amount owing be paid from the Claimant's Award, with the balance of the Award paid to the Claimant in instalments or in lump sum as appropriate.

10.12 Where the Province commences civil or criminal proceedings against a Claimant in relation to this Program, the Claimant's payments shall be stopped. Where the outcome of the proceedings is in the Claimant's favor, a "catch-up" payment, with interest, shall be made and regular instalment payments reinstated.

10.13 A social assistance waiver will be provided to a Claimant who receives an Award under this Program, the effect of which will be to deem the amount of the Award received by the Claimant not to be income for purposes of the laws of the Province of Nova Scotia. However, any income, which a Claimant earns in a year, whether it be income generated from the compensation amount or otherwise, shall be treated as income and may affect the individual's entitlement to social assistance in accordance with the applicable standards or regulations under the applicable legislation.

10.14 Before accepting an Award, an unrepresented Claimant must acquire a Certificate of Independent Legal Advice for which the Province will pay up to a maximum of $120.

COUNSELLING

Interim Psychological Counselling

11.1. Interim psychological counselling is available to a Claimant through the Family Services Association, 6080 Young Street, Suite 509, Halifax, N.S. B3K 5L2; telephone (902) 420-1980 or 1-800-252-9438 (toll-free across Canada) or fax (902) 423-9830. This Association keeps a list of approved Counsellors.

11.2 Interim psychological counselling is available to a Claimant until the earliest of:

(a) the payment of an Award to the Claimant;

(b) the rejection of the Claimant's Demand by the Province, where the Claimant does not give Notice of File Review to the Province within six months;

(c) the decision of a File Reviewer that no compensation is payable to the Claimant;

(d) the withdrawal of the Claimant from the Program; or

(e) the expenditure of $5,000 by the Province for interim psychological counselling for the Claimant.

11.3 A Claimant may make application through the Family Services Association to the Director of the Program to exceed the $5,000 maximum for interim psychological counselling services. Where the Director agrees to extend the interim psychological counselling, the difference between $5,000 and the total cost of the interim psychological counselling for the Claimant will be deducted from the Claimant's long-term counselling award.

Long-Term Counselling

12.1 Upon compensation becoming due to a Claimant all interim psychological counselling will be terminated and the Claimant shall be entitled to long-term counselling.

12.2 The long-term counselling allotment may be applied to the cost of employment counselling, psychological counselling, financial counselling, employment upgrading, educational programs, tattoo removal, dental work, or any combination of these, at the option of the Claimant.

12.3 All long-term counselling allotments are available for five (5) years from the date of the Award after which they are void.

12.4 A Claimant may transfer any portion of the value of the long-term counselling allotment to the spousal partner or children of the Claimant for the purpose of psychological counselling. The cost of such counselling shall be deducted from the Claimant's long-term counselling Award.

12.5 Under this Program, only approved counsellors will be reimbursed for counselling services.

APOLOGY

13.1 Where it is established under these Guidelines that a Claimant shall receive compensation, the Minister shall, by personal letter addressed to the Claimant, convey an apology to the Claimant.

PAYMENT FOR LEGAL SERVICES

14.1 All counsel shall be paid for the services described in Schedule "I" and in accordance with the tariffs attached as Schedule "G".

14.2 As a condition to receiving payment for legal services under this Program, counsel agree to revoke any contingency fee agreement previously entered into between counsel and a Claimant, and no further contingency fee arrangement shall be entered into between the counsel and a Claimant in respect of compensation under this Program.

14.3 An unrepresented Claimant is not entitled to receive payment for time spent in preparing a Demand or any other activity associated with the furtherance of his or her claim under the Program.

TRANSITION

15.1 File Reviews scheduled within 30 days of the effective date will be governed by these Guidelines but may proceed by way of oral hearing with the Claimant present.

15.2 File Reviews scheduled thirty (30) or more days following the effective date, shall proceed by written submission in keeping with these Guidelines, with the date of File Review being the date for the Claimant's File Review Submission.

15.3 Where a File Review was cancelled, adjourned, postponed, or put off because of the disposition of the polygraph policy, the File Review may proceed by written submission in keeping with these Guidelines when the Province is in possession of a written opinion from the polygrapher, and has contacted the Claimant's solicitor regarding the Claimant's interest in undertaking a voluntary polygraph examination.

15.4 A Claimant who wishes to go to File Review and who received a Response six or more months before the effective date of these Guidelines must provide the Province with Notice of File Review by January 15, 1998.

15.5 A Claimant who received an offer of compensation from the Province twelve (12) or more months before the effective date of these Guidelines and who wishes to accept the Province's offer, must provide the Province with an executed Release in the form of Schedule "E" by January 15, 1998.

15.6 A Claimant who has given Notice of File Review but who has not yet provided medical releases as of the effective date of these Guidelines will be required to provide the medical releases before the File Review may proceed where an assessment of the Claimant's medical records is relevant to his or her claim.

SCHEDULE "A"

COMPENSATION CATEGORIES AND COUNSELLING ALLOTMENTS

Categories	Description	Range of Awards ($)	Counselling Allotments
Category 1	Severe Sexual and Severe Physical	$100,000 - $120,000	$10,000
Category 2	Severe Sexual and Medium Physical Severe Physical and Medium Sexual	$80,000 - $100,000	
Category 3	Severe Sexual and Minor Physical Severe Physical and Minor Sexual	$60,000 - $80,000	
Category 4	Severe Sexual	$50,000 - $60,000	
Category 5	Severe Physical Severe Physical and Sexual Interference	$25,000 - $60,000	
Category 6	Medium Physical and Medium Sexual	$50,000 - $60,000	$7,500
Category 7	Minor Sexual and Medium Physical Minor Physical and Medium Sexual	$40,000 - $50,000	
Category 8	Medium Sexual	$30,000 - $50,000	
Category 9	Minor Sexual and Minor Physical	$20,000 - $30,000	$5,000
Category 10	Medium Physical Medium Physical and Sexual Interference	$5,000 - $25,000	
Category 11	Minor Sexual	$5,000 - $30,000	
Category 12	Minor Physical and/or Sexual Interference	$0 - $5,000	

SCHEDULE "B"

CATEGORIES OF ABUSE

The following is a description of the categories listed in Schedule "A". The number of incidents may not be determinative of a category, but may offer guidance to determine a category. Aggravating factors should be considered following the determination of the category, and must relate to a specific allegation of Physical or Sexual Abuse. For clarification, aggravating factors are not compensable in and of themselves: they must be connected to a particular allegation of abuse. Where aggravating factors are present, they may serve to move a Claimant up within the range of a particular category.

SEVERE SEXUAL:

Type of Abuse:
- anal intercourse
- vaginal intercourse; sexual intercourse
- oral intercourse

Duration/Number of Incidents:
- repeated, persistent, characterized as "chronic", "severe"

Aggravating Factors:
- verbal abuse
- withholding treatment
- long-term solitary confinement
- Racist Acts
- threats
- intimidation

SEVERE PHYSICAL:

Type of Abuse:
- physical assault, with broken bones (i.e., nose, arm, etc.), or other serious physical trauma, with or without hands (i.e., objects), with evidence of hospitalization/treatment or permanent partial disability

Duration/Number of Incidents:
- repeated, persistent, characterized as "chronic," "severe"

Aggravating Factors:
- verbal abuse
- withholding treatment
- long-term solitary confinement
- Racist Acts
- threats
- intimidation

MEDIUM SEXUAL:

Type of Abuse:
- anal intercourse
- vaginal intercourse; sexual intercourse

Duration/Number of Incidents:
- one or more incidents
- shorter duration

Type of Abuse:
- oral intercourse
- masturbation/fondling
- digital penetration

Duration/Number of Incidents:
- numerous incidents
- repeated, persistent

Aggravating Factors:
- verbal abuse
- withholding treatment
- solitary confinement
- Racist Acts
- threats
- intimidation

MEDIUM PHYSICAL:

Type of Abuse:
- physical assault, with broken bone or bones (i.e., nose, arm, etc.), or other serious physical trauma, with or without hands (i.e., objects), with evidence of hospitalization/ treatment if available
- chronic beatings, over significant period of time

Duration/Number of Incidents:
- one or more incidents

Aggravating Factors:
- verbal abuse
- withholding treatment
- solitary confinement
- Racist Acts
- threats
- intimidation

MINOR SEXUAL:

Type of Abuse:
- fondling
- masturbation
- oral intercourse
- digital penetration

Duration/Number of Incidents:
- fewer incidents
- short duration

Aggravating Factors:
- verbal abuse
- threats
- intimidation
- withholding treatment
- Racist Acts
- solitary confinement

MINOR PHYSICAL:

Type of Abuse:
- physical assault, with or without hands (i.e., objects) (a.k.a. common assaults)

Duration/Number of Incidents:
- isolated incidents
- short duration

Aggravating Factors:
- verbal abuse
- threats
- intimidation
- Racist Acts
- solitary confinement

SEXUAL INTERFERENCE:

Type of Abuse
- watching
- comments
- intimidation

Duration/Number of Incidents:
- numerous incidents
- repeated, persistent

Type of Abuse
- touching

Duration/Number of Incidents
- one or more incidents
- shorter duration

Aggravating Factors:
- verbal abuse
- threats
- intimidation
- Racist Acts

SCHEDULE "C"

SCHEDULING STATEMENT TAKING

1. To arrange a Statement taking interview with the IIU, a Claimant is requested to call the IIU at 424-0063 in order to provide that office with his or her address, and telephone number. At this time, the Claimant will also be asked to identify the persons against whom the allegations are being made, and whether the allegation is of Physical or Sexual Abuse or both. Alternatively, the Claimant may obtain a form from the IIU and send it to: IIU, P.O. Box 217, Station A, Halifax, N.S. B3J 2M4. Until the IIU has this information, it is not possible to schedule a Statement taking interview.

2. After October 1, 1997, Statement taking Interviews by the IIU will be conducted in Halifax in a suitable room within the Department of Justice, or, where a Claimant lives outside a 250 kilometer radius of Halifax, at a suitable place selected by the IIU.

3. Under extraordinary situations, a Claimant may apply to the Case Manager, IIU, to have the Statement taking interview conducted at an alternative location.

4. A Claimant who lives more than 15 kilometers from Halifax, and who is required to come to Halifax to give a Statement, shall have his or her reasonable travel costs paid (i.e. mileage, train or bus fare). Similarly, a Claimant who is asked to attend an interview at another centre in the Province or outside Nova Scotia shall have reasonable travel costs paid where he or she resides more than 15 kilometers from the centre.

5. General practice is to have the IIU contact the Claimant through his or her counsel. However, where the Claimant's counsel does not know how to reach the Claimant or if the IIU has no response from the Claimant's counsel after a reasonable time has elapsed, the IIU may proceed to contact the Claimant on its own. In such instances, the IIU shall advise the Claimant's counsel in writing of the scheduled time and place of the Statement taking.

6. The IIU will endeavor to reasonably accommodate counsel and the invited person, referenced in Section 2 of Schedule "D," in respect of scheduling the Statement taking interview. However, case file management may require that the Statement proceed without counsel or the invited person present.

7. A Claimant is required to sign a release permitting the Province to access the Claimant's medical records prior to Statement taking.

SCHEDULE "D"

STATEMENT TAKING

1. All Statements taken are to be videotaped in such manner that the Claimant's face is clearly visible to the viewer of the videotape. These Statements are to be in pure version format, and when the pure version is complete, may be followed by a question and answer session.

2. A Claimant's counsel may be present during the course of the Statement taking interview. In addition, the Claimant may invite one person, such as a therapist, counsellor, spiritual advisor, or family member, to attend the Statement taking interview with the Claimant. The invited person may not comment, offer opinions, or counsel or lead the Claimant during the interview. An investigator may suspend or terminate an interview where he or she is of the opinion that a Claimant is being coached or led, or where the interview is otherwise interrupted.

3. Before Statement taking begins, the Claimant shall be sworn or affirmed. The Claimant shall also be cautioned by the investigator that false allegations constitute offences under the *Criminal Code* and the *Child and Family Services Act*, and asked if his or her Statement is freely and voluntarily given. Should a Claimant decline to be sworn or should a Claimant maintain that he or she is not giving the Statement voluntarily, the Statement taking interview will not proceed.

4. If, in the opinion of the IIU investigator conducting the Statement taking, a Claimant is under the influence of alcohol or drugs or is not able to understand the nature of the process or the questions posed, the investigator will not proceed with the Statement taking and the Claimant will be required to make a new appointment for Statement taking purposes.

5. Copies of "photo-ID's" or "yearbooks", sometimes shown to a Claimant during Statement taking, will not be provided to the Claimant, or his or her counsel, prior to or following the interview.

SCHEDULE "E"

RELEASE

I,____, on behalf of my heirs, executors,

(PRINT NAME)

administrators, successors and assigns, IN CONSIDERATION of the provision to me of benefits under the Compensation for Institutional Abuse Program operated by the Province of Nova Scotia, acknowledge and agree to be legally bound as follows:

1. I am a Claimant for compensation for physical and/or sexual abuse experienced while I was a minor in the care and custody of the Province of Nova Scotia at one or more of these Institutions: the Nova Scotia School for Boys (Shelburne Youth Centre); the Nova Scotia School for Girls (Nova Scotia Residential Centre); the Nova Scotia Youth Training Centre ("the Institutions").

2. I understand the provisions of the Compensation for Institutional Abuse Program ("the Program") operated by the Province of Nova Scotia ("the Province"), including the conditions of participating in the Program and the benefits which are available to me.

3. I understand that if I am to receive payment from the Program it will be paid as follows: if the compensation award (exclusive of counselling) is $10,000 or less it will be paid in a lump sum. If the award is greater than $10,000 (exclusive of counselling) there will be an initial payment of the greater of $10,000 or 20% of the award. The balance of the award will be paid in equal instalments over the next four years, with interest at the rate of 5% per annum, compounded annually.

4. I hereby release and forever discharge Her Majesty the Queen in Right of Nova Scotia and her present and former servants, agents, employees and officials, from all manner of actions, causes of action, claims or demands which I may now or in the future have for any cause, matter or thing whatsoever arising out of my being in the care and custody of the Province at any or all of the Institutions or arising out of actions taken in relation to investigation, assessment or payment of claims or benefits under the Program.

5. I understand and agree that by providing any benefits to me, no admission is made that Her Majesty in Right of Nova Scotia, her employees, agents or servants were negligent or in breach of any duty owed to me or that they were in any way legally responsible for any damages or injuries arising out of any contact I have had with the Institutions. I understand and accept that any liability for injury or damages arising out of such abuse is denied by the Province.

6. I agree that I will not commence or maintain any action against Her Majesty the Queen in Right of Nova Scotia under any Federal or Provincial laws for negligence, contributory negligence, breach of contract, breach of trust or fiduciary responsibility or any action of any kind whatsoever with respect to any damage experienced as a result of my being in care or otherwise attending at one or more of the Institutions.

7. I agree that the benefits provided under the Program are in substitution for any recourse that I may have at law or in equity to commence any proceedings against Her Majesty the Queen in Right of Nova Scotia in a court of law or in any administrative or other forum and I agree to be bound by the results of the process provided under the Program.

8. I understand and agree that at any time, now or in the future, the Statement(s) and other material I have submitted in support of my claim may be subject to investigation regarding the accuracy of the Statements and material.

9. I understand the Statement(s) and other material I have submitted in support of my claim may be used without notice to me for purpose of assessment of my claim and for other purposes relating to alleged abuse, including but not limited to:

a. discipline proceedings relating to present employees of the Province;

b. any investigation or prosecution of an offence;

c. a report of child abuse to the Department of Community Services, and any investigation undertaken by that Department or a child protection agency;

d. civil litigation on behalf of or against the Province or a child protection agency; or

e. the identification of potential witnesses for the investigation and validation of claims.

10. I understand that serious consequences may arise if I have submitted Statements or other evidence relating to my claim which I know or should have known to be false. These consequences include legal action for return of money paid as compensation and/or criminal proceedings. In addition, if civil or criminal legal action is commenced in relation to suspected submission of a false Statement or evidence, I understand the Province will stop any payments which may be due at the time of commencement of the proceedings until the proceedings are fully resolved in my favour.

11. I promise not to disclose the amount of any compensation which I may receive except to my professional advisors and therapists and my family.

12. I acknowledge having obtained or having been given the opportunity to obtain independent legal advice and declare that I understand the nature and effect of this Release and have considered the alternative forms of action available to me. I am signing this Release freely and of my own accord without any undue influence from anyone.

IN WITNESS WHEREOF I have signed this Release this day of 199 .

SIGNED, SEALED AND DELIVERED)
in the presence of)
)
)
)
)

(Witness) (Signature of Claimant)

SCHEDULE "F"

FILE REVIEWERS

Robert Crosby
Doug Sealy
Kenneth Crawford
Bruce Outhouse
Wayne Beaton
Peter Lederman
Anna Marie Butler
Bruce Gillis
James Dewar
Michele Cleary
Milton Veniot
Leanne Wrathall
Christopher Manning
Joe Rizzetto
Peter MacKeigan
Anna Paton
Jean McKenna
Lee Cohen
Clare Christie

SCHEDULE "G"

LEGAL SERVICES : TARIFF

1. Legal services shall be paid in accordance with the following tariff:

   (a) Senior counsel (10+ years' practice): their usual hourly rate to a maximum of $175 per hour.

   (b) Intermediate counsel (5 to 9 years' practice, inclusive): their usual hourly rate to a maximum of $150 per hour.

   (c) Junior counsel (less than 5 years' practice): their usual hourly rate to a maximum of $125 per hour.

   (d) Articled clerks: their usual hourly rate to a maximum of $75 per hour.

2. Time spent by counsel's office staff shall be considered to be included in the above hourly rates.

3. Disbursements shall be charged at the actual rate incurred, and may include the usual disbursements paid in relation to the preparation and advancement of a Claimant's claim (i.e., photocopying, postage, long-distance telephone calls).

4. Counsel's travel expenses shall be paid, where the distance travelled exceeds 50 kilometres, in accordance with the following tariffs:

   (a) Where travelling is done between the hours of 8:00 a.m. and 7:00 p.m., counsel's time shall be charged in accordance with the hourly rates established in Section 1 above.

(b) Where travelling is done outside the hours of 8:00 a.m. and 7:00 p.m., counsel's time shall be charged at one-half the hourly rates established in Section 1 above.

(c) Airfare shall be paid at the actual amount incurred (receipts required).

(d) Mileage, where travel was by car, shall be paid at $0.29 per kilometre.

(e) Hotel room rates, exclusive of room service, shall be paid at the actual amount incurred (receipts required).

(f) Actual cost of two meals per day shall be paid, to a maximum of $40.

5. The Province of Nova Scotia's Travel and Relocation Policy (Chapter 7, Manual 500 - Human Resource Management: Section C - Employee Benefits) is to be used as a guide with respect to travel expenses.

INSTALMENT PAYMENT OPTIONS

OVER 4 YEAR PERIOD: Examples

Total Award	Initial instalment ($10,000 or 20% of award)	Balance to be paid over 4 years	Each further instalment if *monthly*	Each further instalment if *annually*
$ 5,000	not applicable: total award paid	$ 0.00	$ 0.00	$ 0.00
10,000	not applicable: total award paid	0.00	0.00	0.00
15,000	10,000	5,000	115	1,410
20,000	10,000	10,000	230	2,820
25,000	10,000	15,000	345	4,230
30,000	10,000	20,000	461	5,640
35,000	10,000	25,000	576	7,050
40,000	10,000	30,000	691	8,460
45,000	10,000	35,000	806	9,870
50,000	10,000	40,000	921	11,280
55,000	11,000	44,000	1,013	12,409
60,000	12,000	48,000	1,105	13,537
65,000	13,000	52,000	1,198	14,665
70,000	14,000	56,000	1,290	15,793
75,000	15,000	60,000	1,382	16,921
80,000	16,000	64,000	1,474	18,049
85,000	17,000	68,000	1,566	19,177
90,000	18,000	72,000	1,658	20,305
95,000	19,000	76,000	1,750	21,433
100,000	20,000	80,000	1,842	22,561
105,000	21,000	84,000	1,934	23,689
110,000	22,000	88,000	2,027	24,817
115,000	23,000	92,000	2,119	25,945
120,000	24,000	96,000	2,211	27,073

Explanation:

1. If the award is $10,000 or less, the Claimant receives one payment only and there are no payments by instalment.

2. If the award is greater than $10,000, the Claimant receives an initial payment equal to the greater of $10,000 or 20% of the award.

3. Where the award is greater than $10,000, the balance will be paid to the Claimant over a period of four (4) years at an interest rate of 5%, with the first instalment payment beginning one period after the initial payment.

4. The Claimant may choose to have the balance of his or her award paid monthly or annually. By way of example, if a Claimant chooses to receive payments on a monthly basis, the first monthly instalment payment will start one month after the initial payment, providing the Claimant's payment instructions have been received. Alternatively, if the Claimant chooses to receive the balance of the award in annual amounts, the next instalment will be one year from receipt of the initial payment.

5. The Claimant's instructions must be received in writing before payments may be made. If more than one (1) month passes from the date of acceptance of the Award to the date the written instructions are received, the Claimant will receive a "catch-up" payment, equal to the number of months between the acceptance of his or her Award and the month following the receipt of the Claimant's written instructions.

SCHEDULE "I"

LEGAL SERVICES

LEGAL SERVICES IN RESPECT OF THE DRAFTING OF THE MEMORANDUM OF UNDERSTANDING

1. Counsel may submit an account for legal services, travel and disbursements incurred, from July 20, 1995, up to, and including May 15, 1996, in respect of discussions with the Province to develop the Memorandum of Understanding, exclusive of time, travel and disbursements incurred in connection with services provided to a particular client's civil claim.

2. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel, or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 11-16.

3. Counsel shall not be entitled to submit accounts in respect of any Memorandum of Understanding meetings which they did not personally attend.

LEGAL SERVICES IN RESPECT OF A CLAIMANT'S CIVIL CASE

4. Counsel may submit an account for legal services, disbursements and travel incurred in furtherance of a particular Claimant's civil case, from the date counsel was retained by the particular Claimant up to and including May 15, 1996, which account shall be exclusive of time spent: in preparation for, correspondence regarding, or attendance at, media interviews; and in respect of lobbying the Province for a public inquiry.

5. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel; or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 11-16.

6. Once the amount of the account has been determined through acceptance, negotiation or taxation, the amount so determined shall be paid within 30 days of the date of the determination of the compensation payable to the particular Claimant. For further certainty, if there is a final determination that no compensation is payable to the Claimant, then no litigation fees shall be payable in respect of that Claimant.

LEGAL SERVICES IN RESPECT OF A CLAIMANT'S COMPENSATION CLAIM

7. Counsel may, on receipt of compensation funds for a particular Claimant, submit an account for legal services, disbursements and travel incurred on behalf of that Claimant after May 15, 1996. In respect of services provided to a Claimant to whom an Award has not been made by the effective date of these Guidelines, the maximum number of hours of representation in this account may increase from 10 hours to 15 hours. Where an Award was made prior to the effective date of these Guidelines, the maximum number of hours of representation is 10 hours.

8. Should the Province reject the account as submitted, counsel who submitted the account shall either negotiate with the Province to establish, in writing, an account which is mutually acceptable to the Province and counsel; or shall notify the Province in writing that the account may be submitted to taxation in accordance with paragraphs 11-16.

9. Once the final amount of the account has been determined through acceptance, negotiation or taxation, the amount shall become payable within 30 days.

CONTINGENCY FEES

10. Once a Claimant has signed a Release in the form attached as Schedule "E", all contingency fee agreements previously entered into between a Claimant and the Claimant's counsel shall be revoked, and no further contingency fee arrangements shall be entered into between the Claimant and the Claimant's counsel in respect of compensation payable under this Program.

TAXATION

11. Notwithstanding any provincial legislation respecting taxation of legal accounts for services, Robert W. Wright, Q.C., shall act as a taxing master in respect of any accounts for services.

12. Upon receipt of a written request for taxation, Robert W. Wright, Q.C. shall, within 30 days of receipt of the request, set the matter down for a hearing on a date which is acceptable to both parties, but in any event the hearing shall be held within 90 days of receipt of the request.

13. Despite Sections 11 and 12, counsel and the Province may agree in writing to submit an account to the provincial Taxing Master appointed in accordance with provincial legislation, where Robert W. Wright, Q.C., is in a conflict of interest position in respect of that counsel or a particular Claimant.

14. The decision of Robert W. Wright, Q.C., or the provincial Taxing Master in respect of a particular account shall be final and shall not be subject to appeal.

15. Taxation of a particular account may be conducted by telephone conference or in person, and counsel whose account is being taxed and the Province shall be entitled to participate in the taxation.

16. The Province shall be responsible for paying for the services of Robert W. Wright, Q.C., and the provincial Taxing Master.

Appendix H

Memorandum of Agreement

Memorandum of Agreement

Between:

Her Majesty The Queen in Right of the Province of Nova Scotia, Represented by the Departments of Justice, Community Services and Human Resources ("the Employer")

and

the Nova Scotia Government Employees Union (the "Union");

I GENERAL

Application

1. (1) This Memorandum and the options it provides for will be made available to employees

(a) against whom allegations of abuse have been made that are within the mandate of the Internal Investigation Unit (the "IIU"); and

(b) who are not discharged after the completion of the IIU process as it pertains to a particular employee.

(2) While the IIU process is ongoing, the options listed in the Interim Memorandum of Agreement of April 18, 1998 will continue to apply on the understanding that the application of the Interim Memorandum is without prejudice to the right of the Employer, in accordance with applicable collective agreements, to take disciplinary action, up to and including discharge, when the IIU process as it pertains to a particular employee is completed. Upon an employee becoming, in accordance with sub-paragraph 1 (1), eligible for assistance under this Memorandum, the Interim Memorandum will cease to have application to that employee.

(3) This Memorandum will also apply to any other employee agreed to by the Employer and the Union.

Purpose

2. The purpose of the Employer and of the Union is to:

(a) define the options that will be made available to employees when they become eligible in accordance with paragraph 1;

(b) describe the process by which the options will be applied and the process by which any disputes will be resolved;

(c) state the obligations and role of each of the parties in making the options and the processes operational; and

(d) use a continuing career in the public service of the Province of Nova Scotia as the primary but not the exclusive method for assisting employees to whom this Memorandum applies.

Guiding Principles

3. The Employer and the Union mutually recognize and endorse the following principles as relevant to the interpretation and application of this Memorandum:

   (a) the importance of the interests, welfare and well-being of the employees in determining which option or options are applicable;

   (b) the need for mutual creativity and flexibility in fashioning solutions that meet the needs of individual employees;

   (c) the need for confidentiality as it relates to information regarding individual employees; and

   (d) the need for mutual respect for the collective agreement rights of other employees.

Special Circumstances

4. The Employer and the Union both agree that the circumstances and situation of the employees who are the subject of this Memorandum are unique and without precedent. This Memorandum is applicable only to the employees described in paragraph # 1, and the parties agree that the application of this Memorandum should only affect the rights of others to the extent necessary to achieve its purpose. This Memorandum and everything done under this Memorandum is without prejudice to the respective rights of the Employer and the Union in all other situations, discussions, and proceedings.

Effective Date

5. This Memorandum is effective from the date on which the regulations required to implement Section 17 (early retirement) take effect.

Policy Grievance P-97-124

6. In consideration for the execution of this Memorandum, the Union agrees to withdraw policy grievance P-97-124. It is recognized that individual employees retain their rights to grieve disciplinary actions taken on completion of the IIU process.

II PLACEMENTS/TRANSFERS/CONTINUING EMPLOYMENT

Placement/Transfers

7. The Employer agrees to continue to identify and to keep, for the joint use of the Employer and the Union, an inventory of available placement and transfer opportunities with the Employer for employees and to place or transfer employees into appropriate identified opportunities.

Seniority

8. Where a placement or transfer opportunity is determined to be appropriate for more than one (1) employee, access to the placement or transfer opportunity shall be determined by seniority. Where a placement opportunity is a bargaining unit position, the placement rights of redundant or laid off employees relative to an employee under this Memorandum shall be determined on the basis of seniority.

Posting

9. Where required to facilitate a placement or transfer under this Memorandum, the Union will waive compliance with job posting provisions that would otherwise be applicable.

Temporary and Trial Placements/Transfers

10. (1) Whenever possible, the objective of the Employer and the Union will be the availability to each employee of an option that will be a long-term solution for that employee. Where such an option, such as a long-term placement or transfer, is not available or where, by mutual agreement, a temporary placement or transfer is in the best interests of an employee (for example, as providing an employment bridge to retirement), the Employer will place or transfer the employee in to an available temporary placement or transfer opportunity.

(2) The Employer and the Union recognize that it may only be possible to assess the suitability and success of placements or transfers after the employee has had some time in the position, and that successful placement in accordance with this Memorandum may therefore involve one or more trial placements.

Salary Protection

11. In the case of placements or transfers within the civil service, the Employer will ensure salary protection on a present incumbent only basis and in the case of all other placements and transfers, on the basis of red-circling.

Managed Returns to Work

12. The Employer recognizes that the placement or transfer of an employee to a position under this Memorandum will, in some cases, have to be a managed process similar to that applied in facilitating return to work by employees on sick leave or LTD.

Retraining

13. Where necessary or helpful in making a placement or transfer feasible, the Employer will provide retraining assistance. This assistance shall be provided up to the point of undue hardship to the Employer, having regard to all relevant factors, including the cost and length of required retraining, the preparedness of the employee for the placement or transfer opportunity without the retraining, the age and expected length of service of the employee in the placement or transfer opportunity, the operational needs of the Employer and the availability of other placement or transfer opportunities for the employee. The Employer and the Union agree that retraining assistance in accordance with the EDIP will normally be satisfactory (i.e., $5,000 maximum).

Relocation Assistance

14. Where relocation is necessary to facilitate a placement or relocation within government, the Employer shall provide relocation assistance in accordance with civil service policy as it applies to transferred employees.

EAP and Other Counselling

15. The Employer and the Union agree that the government's Employee Assistance Program shall continue to be available to all of the employees subject to this Memorandum. The Employer and the Union will jointly hold discussions with representatives from the Employee Assistance Program to determine the appropriate level of service for employees subject to this Memorandum. The Employer and the Union agree that the need for other counselling will be reviewed by the Employer and the Union on an ongoing basis to assess the need and justification for other or more extensive forms of counselling, on a case by case

basis. The need or desirability for ongoing counselling support will also be reviewed in respect of employees subject to this Memorandum who have continued on active duty in the Department of Justice or Department of Community Services.

III EARLY RETIREMENT

16. Subject to the passing of the appropriate regulations under the *Public Service Act*, the Employer agrees to a four-year early retirement program for employees who are eligible in accordance with paragraphs 1 (a) and (c), to run from April 1, 1998 to May 31, 2002. The early retirement options and benefits will be consistent with those that were available under the general Early Retirement Program that expired on March 31, 1998. For greater certainty, early retirement will only be an option once it is determined by the Employer that the employee would not be discharged on the basis of IIU outcomes and not until valid discipline, short of discharge, if any, has been imposed.

IV TRANSITIONING TO CAREERS OUTSIDE GOVERNMENT

17. (1) For the purpose of assisting employees who do not want continuing employment with the Province and who are not appropriately placed in a long-term placement or transfer opportunity, the Employer will allow such employees to end their employment with the Province under the Early Departure Incentive Program. This option does not apply to employees who access the early retirement option, and it does not apply, in the case of an employee who is disciplined, short of discharge, until the discipline has been imposed.

(2) The Employer also agrees, in consultation with the Union, to develop a package of information relevant to employees starting new careers outside government, on available services and resources in areas such as financial planning, entrepreneurship training and mentoring, and small business formation.

(3) Employees who end their employment with the Province under this paragraph will be paid an amount equal to accrued public service award.

V LTD AND SICK LEAVE

LTD Cases

18. The Employer and the Union agree that employees on STD or LTD due to disabilities caused by the making of allegations of abuse should have short-term illness and LTD benefits topped-up to 100% of pay and that, in the case of LTD benefits, this top-up should not be deducted from LTD benefits. They also agree that when these employees return to work on a part-time basis, whether with the Employer or, with the agreement of the Union and the Employer, with another employer, they should not have their earnings deducted from their LTD benefits, except to the extent that total income would be more than 100% of the applicable pay rate. This paragraph is subject to agreement by the LTD Board of Trustees. The Employer and the Union will regularly review each top-up situation for consistency with the spirit and intent of this Memorandum.

Sick Leave

19. The Employer will, where consistent with the spirit and intent of the parties to this Memorandum, adjust the income of employees in an amount equal to pay lost by the employee while on LTD prior to the coming into force of the Interim Memorandum and/or during the period, if any, between the exhaustion of short-term and long-term illness benefits. The Employer and the Union will jointly review each case to ensure consistency with the spirit and intent of the parties.

Managed Return to Work

20. For employees subject to this Memorandum who are on sick leave, it is recognized that their return to work may require a managed return to work plan, developed with appropriate medical, nursing or other relevant professional input.

VI RECOVERY OF EXPENSES INCURRED

21. The Employer will reimburse employees subject to this Memorandum for expenses reasonably incurred by the employee as a direct consequence of being accused of and investigated for abuse. Reimbursement will be limited to claims that are provable, substantiated and legitimate in the circumstances. Expenses incurred after the date of signing of this Memorandum will require prior Employer approval.

VII LEGAL FEES

22. (1) In accordance with correspondence between the Union and the Department of Justice on the issue of legal fees incurred by the Union on behalf of employees to whom this Memorandum applies, and the agreements set out therein, the Union will be reimbursed for legal expenses incurred by it on behalf of employees. Without limiting or amending those agreements, the expenses to be reimbursed do not include expenses in relation to policy grievance P-97-124, the issue of compensation or, except as specifically provided for in the correspondence, expenses in relation to investigations conducted as part of the criminal justice process.

(2) Employees who are charged with offences and who are acquitted will be reimbursed legal expenses incurred after the laying of the charge or charges in their defence, provided they are not disciplined by the Employer, in accordance with the applicable collective agreement, for the conduct on which the charges were based; i.e., on the balance of probabilities rather than on the standard of proof beyond a reasonable doubt. Reimbursement will be in accordance with the guidelines generally used by the Department of Justice for the payment of legal fees, which guidelines are referenced in the correspondence referred to in 22 (1).

VIII EXONERATION

23. The Employer will, to the extent possible given the outcome of the IIU process, provide written exoneration to employees. The exoneration, if any, is understood to be exoneration based on a non-criminal investigation for the purpose of making employment-related decisions. The criminal process is a distinct process to which this Memorandum has no application.

IX PROCESS

Application of Options

24. The Employer and the Union agree that they will be jointly responsible for the application of this Memorandum of Agreement and that in doing so, they will receive and give full consideration to the advice of third party professionals engaged to work with the employees in the area of career development and job placement, which advice will include a statement of the employee's preferred outcome. If the Employer and the Union cannot agree on the application of this Memorandum to a particular employee, they will refer the disagreement to a career development / job placement professional, not a professional hired to work with the employees, whose advice shall be determinative.

Dispute Resolution

25. The Employer and the Union agree that any dispute relating to the general interpretation of this Memorandum may be referred to the process set out in the Appendix to this Memorandum. This process is not applicable to any dispute within paragraph 24.

Communications with Employees

26. In communicating with the employees in the course of implementing this Memorandum, the Employer and the Union will, to the extent possible, rely upon the third party professional or professionals engaged to work with the employees in the area of career development and job placement. The third party will make sure the employees are aware of the options provided for under this Memorandum.

Use of Government Staff, Resources and Systems

27. Wherever possible and consistent with the objectives of this Memorandum, the Employer and the Union agree to rely upon existing Province of Nova Scotia programs, staff and processes in the implementation of this Memorandum.

Made at Halifax, on June 25th, 1998.

For the Employer

For NSGEU

Appendix

(1) If a dispute arises between the parties as to the general interpretation of this Memorandum of Agreement, it shall not constitute a grievance under any collective agreement, but shall be resolved in accordance with the following procedure.

(2) The parties agree to the following chairpersons to hear disputes under this process:

Bruce Archibald
William Kydd
Bruce Outhouse

A chairperson may be removed from or added to the foregoing list by mutual agreement of the parties.

(3) Prior to any matter being referred to a chairperson under this process, the parties shall within two days of the matter being raised, clarify their positions on the issue. Failure to satisfactorily resolve the matter will result in a statement by the respective parties of their position in the matter in dispute in support of their position to the chairperson.

(4) Disputes will be referred to chairpersons on a rotating basis, depending upon availability to convene a hearing within seven (7) days of the matter being referred. The parties may mutually agree to extend this time limit where appropriate. The hearing of any one dispute will not exceed one day.

(5) A failure to effect a settlement between the parties shall not prohibit the chairperson from making a binding award. All settlements or awards under this procedure shall be without prejudice.

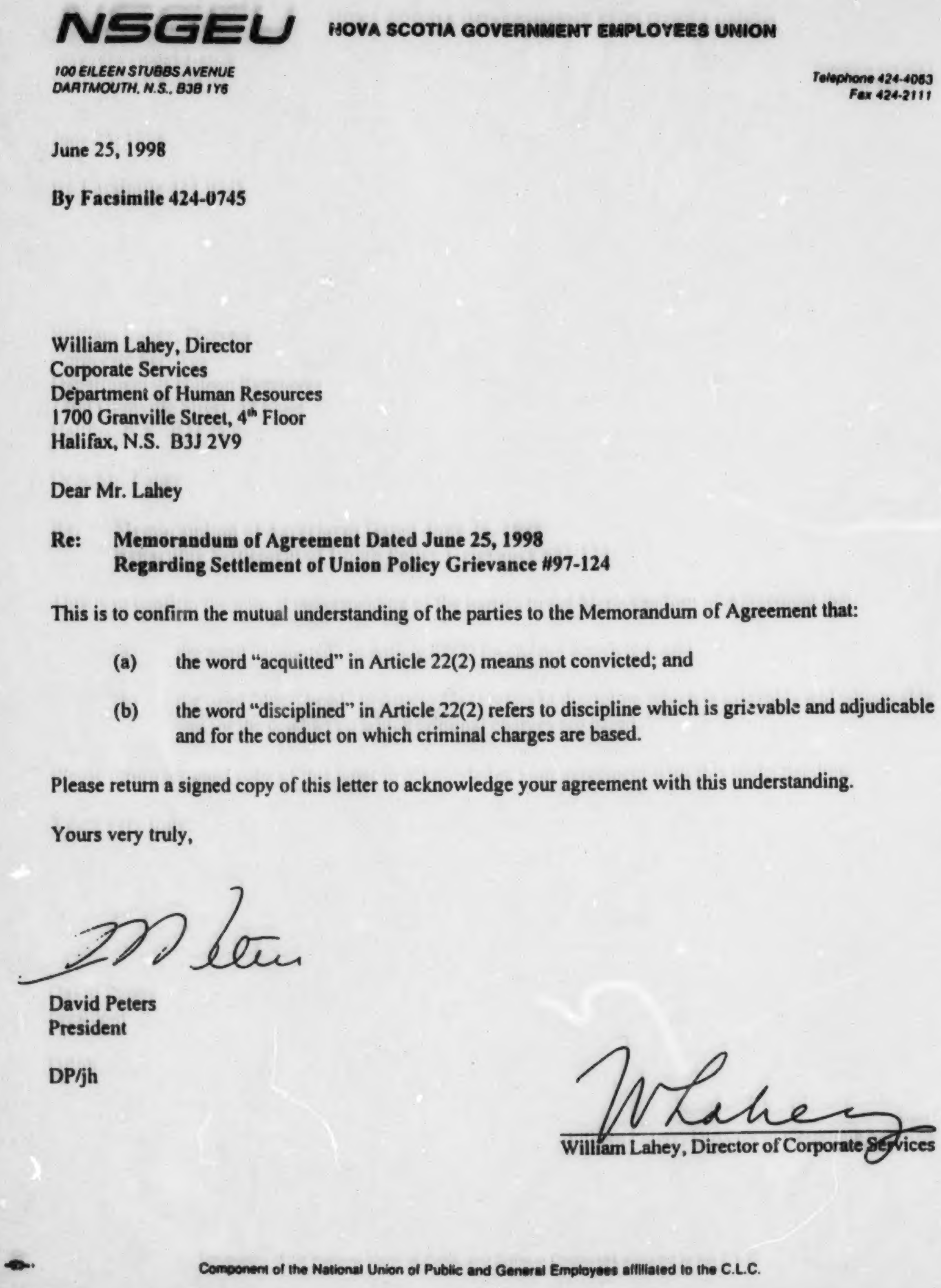
(6) The chairperson shall hear the dispute and render a decision which shall be final, binding and enforceable on the parties. However, the chairperson shall not have the power to amend the Agreement or to alter, modify or amend any provisions of the applicable collective agreements. The award shall be limited to stating the proper interpretation of the Memorandum.

The chairperson shall normally render an oral award at the conclusion of the hearing. The chairperson shall in all cases render a written decision not more than five (5) working days following the hearing. This time limit shall not be extended.

No written reason for the decision of the chairperson shall be provided beyond that which the chairperson deems appropriate to convey a decision. Such awards shall not establish a precedent and may not be referred to by the parties in respect of other matters.

(7) The parties shall equally share the cost of the fees and expenses of the chairperson.

(8) The parties shall not utilize legal counsel in presentation under this process.



NSGEU NOVA SCOTIA GOVERNMENT EMPLOYEES UNION

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DARTMOUTH, N.S., B3B 1Y6

Telephone 424-4063
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June 25, 1998

By Facsimile 424-0745

William Lahey, Director
Corporate Services
Department of Human Resources
1700 Granville Street, 4th Floor
Halifax, N.S. B3J 2V9

Dear Mr. Lahey

Re: Memorandum of Agreement Dated June 25, 1998
Regarding Settlement of Union Policy Grievance #97-124

This is to confirm the mutual understanding of the parties to the Memorandum of Agreement that:

(a) the word "acquitted" in Article 22(2) means not convicted; and

(b) the word "disciplined" in Article 22(2) refers to discipline which is grievable and adjudicable and for the conduct on which criminal charges are based.

Please return a signed copy of this letter to acknowledge your agreement with this understanding.

Yours very truly,

David Peters
President

DP/jh

W Lahey
William Lahey, Director of Corporate Services